

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 22-50

Date Received: March 14, 2022

Title: DUNS Conversion to UEI - Guidance

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Policy and Guidance: (Please check only one box)

- | | |
|---|--|
| <input type="checkbox"/> Policy | <input type="checkbox"/> Procurement Tools and Resources |
| <input checked="" type="checkbox"/> Guidance | <input type="checkbox"/> Real Property Templates and Samples |
| <input type="checkbox"/> Procurement Samples | <input type="checkbox"/> Procurement Clauses |
| <input type="checkbox"/> Procurement Templates | <input type="checkbox"/> Real Property Clauses |
| <input type="checkbox"/> Procurement Forms | <input type="checkbox"/> Other Tools and Resources |
| <input type="checkbox"/> Procurement Checklists | |

Summary of Change:

(1) Conversion of DUNS and DUNS +4 references to Unique Entity Identifier (UEI) and Electronic Funds Transfer indicator, and (2) Administrative updates re modification authority.

Reason for Change:

(1) Government-wide transition mandated by GSA effective April 4, 2022, and (2) administrative update.

Development, Review, and Concurrence: AAQ-2/AAQ/AAP-430/AAP-110

Target Audience: Program office and contracting personnel.

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location:

T3.2.2.7, T3.3.1, and T3.10.1 (corresponding changes to Clauses and Procurement Forms)

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links: https://fast.faa.gov/PPG_Procurement.cfm

Attachments: Redline and final documents.

Other Files: N/A.

Redline(s):

[T3.2.2.7 – Contractor Qualifications](#)

[T3.3.1 – Contract Funding, Financing & Payment](#)

[T3.10.1 – Contract Administration](#)

Section Revised: T3.2.2.7 – Contractor Qualifications

Procurement Guidance - (~~1/2022~~4/2022)

T3.2.2.7 - Contractor Qualifications Revised 1/2009

A Contractor Qualifications

- 1 Responsibility Determination of Prospective Contractors Revised ~~9/2020~~4/2022
- 2 Responsibility Determination for Real Property Added 9/2020
- 3 Team Arrangements Revised 9/2020
- 4 Debarment and Suspension Revised 9/2020
- 5 Notices to GSA and SAM Revised ~~9/2020~~4/2022
- 6 Prohibition Against Contracting with Inverted Domestic Corporations Revised 9/2020

B Clauses ~~C Forms~~

~~D Appendix 1 – Definitions~~C Procurement

Forms Revised 4/2022

D Procurement Samples Added 4/2022

E Procurement Templates Added 4/2022

F Procurement Tools and Resources Added 4/2022

G Appendix 1 - Definitions Revised ~~10/2020~~4/2022

T3.2.2.7 - Contractor Qualifications Revised 1/2009

A Contractor Qualifications

1 Responsibility Determination of Prospective Contractors Revised ~~9/2020~~4/2022

a. *General Standards.* A responsible contractor:

- (1) Has or can obtain adequate financial resources to perform a contract;
- (2) Has the ability to meet any required or proposed delivery schedules;
- (3) Has a satisfactory performance history;
- (4) Has a record of integrity and proper business ethics;
- (5) Has appropriate accounting and operational controls that may include, but are not limited to:
 - (a) Production control;
 - (b) Property control systems;
 - (c) Quality assurance programs; and
 - (d) Appropriate safety programs; and
- (6) Is qualified and eligible to receive an award under applicable laws or regulations.

b. *Determination.*

- (1) The Contracting Officer's (CO) signature on a contract constitutes a determination that a prospective contractor is responsible with respect to that contract.
- (2) The burden of proof is on the prospective contractor to demonstrate its responsibility to perform under the terms of the contract.

c. *Obtaining Information.* When making a determination of responsibility, the CO should have, or obtain, information sufficient to be satisfied that a prospective contractor currently meets applicable standards. The CO should apply the following guidelines in collecting data/information:

- (1) Generally, the CO should obtain information on prospective contractors

promptly after receipt of offers. Requests for information should ordinarily be limited to information from those offerors most likely to be considered for award, and may include requesting preaward surveys. Depending on the circumstances, the CO may obtain this information before issuing the Screening Information Request (SIR).

- (a) A preaward survey may be useful when the information on hand or readily available to the CO is not sufficient to make a determination regarding responsibility. When the requirement is for smaller dollar amounts or commercial items, the CO should consider the cost of the preaward survey in relationship to the requirement.

- (b) Preaward surveys should be managed and conducted by the surveying activity. Whether the surveying activity is within or outside of the contract administration office, the CO should obtain from the office or auditor:

- (i) Any information required concerning the prospective contractor's financial competence and credit needs; and

- (ii) The adequacy of the prospective contractor's accounting systems and the suitability of their use in administering the proposed type of contract.

- (c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity should specify the extent to which the prospective contractor has taken or plans corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance.

- (d) The surveying activity may provide an abbreviated survey report when it possesses information that supports a recommendation of complete award without an on-site survey and no special area for investigation has been requested.

- (e) Information on financial resources and performance capability should be current as of the date of award.

- (f) The CO's request to the surveying activity should include:

- (i) Additional factors about which information is needed;

- (ii) The complete SIR package (unless it was previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

- (iii) A statement whether the contracting office will participate in the survey;

- (iv) The date by which the report is required. This date should be consistent with the scope of the survey requested and normally should allow at least 7 working days to conduct the survey; and
 - (v) When appropriate, limitations on the scope of the survey.
- (2) In addition to the preaward survey, the CO may use the following sources of information to support responsibility determinations:
 - (a) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.
 - (b) The prospective contractor, including proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.
 - (c) Other sources such as publications, suppliers, subcontractors, customers of the prospective contractor, and financial institutions; or
 - (d) If the contract is for construction, the CO may consider performance evaluation reports.
- (3) The CO must review the "Exclusions" portion of the "Performance Information" capability in the System for Award Management (SAM) to ensure prospective contractors are not listed. (See Notices to SAM below).
- (4) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully should promptly exchange relevant information.
- d. *Documentation.* The CO should consider the following guidelines for documenting contractor responsibility determinations:
 - (1) A determination of responsibility requires no additional documentation beyond the CO's signature on the contract. Supporting documents such as the preaward survey reports, performance records, and related data/information should be included with other contract file documentation.
 - (2) If a prospective offeror who is otherwise eligible to receive an award is determined to be nonresponsible, the CO should insert signed documentation in the contract file supporting the nonresponsibility determination. Supporting documentation such as preaward survey reports, performance records, and related data/information should also be included in the file with the nonresponsibility determination.

- (3) A nonresponsibility determination for a small business is processed in the same manner as for large businesses. There is no requirement to coordinate with the Small Business Administration (SBA); however, the CO may choose to consult with FAA's Small Business Program (AAP-20) staff.

2 Responsibility Determination for Real Property Added 9/2020

a. General Standards. A responsible vendor or Owner:

- (1) Has sufficient interest in subject property to convey property rights to the FAA or authorization to enter into contracts on behalf of the Owner.
- (2) Has good, clear title to the property, meaning that the title is valid and the property is clear of any liens.
- (3) Is qualified and eligible to receive an award under applicable laws or regulations.
- (4) Has a satisfactory performance history; and
- (5) Has a record of integrity and proper business ethics.

b. Determination.

- (1) The Contracting Officer's (CO) signature on a contract constitutes a determination that a vendor or owner is responsible with respect to that contract.
- (2) The burden of proof is on the vendor or owner to demonstrate its responsibility to perform under the terms of the contract.

c. Obtaining Information. When making a determination of responsibility, the CO should have, or obtain, information sufficient to be satisfied that a vendor or owner currently meets applicable standards.

d. Documentation. The CO should consider the following guidelines for documenting a vendor or owner responsibility determination:

- (1) Supporting documents such as land surveys, warranty deed, property records, performance records, and related data/information should be included with other

contract file documentation.

- (2) If a vendor or owner is otherwise eligible to receive an award is determined to be non-responsible, the CO should insert signed documentation in the contract file supporting the non-responsibility determination. Supporting documentation such as performance records and related data/information should also be included in the file with the non-responsibility determination.

3 Team Arrangements Revised 9/2020

a. General.

- (1) Team arrangements are cooperative arrangements where:
 - (a) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
 - (b) A potential prime contractor enters into an agreement with one or more other companies to have them act as subcontractors under a specific contract.
- (2) Benefits of team arrangements to both FAA and an offeror or contractor include, but are not limited to:
 - (a) Increases competitive edge and presents a stronger position to FAA;
 - (b) Provides companies access to new markets and opportunities;
 - (c) Allows companies to collaborate and focus on their core capabilities;
 - (d) Brings differing skills and experience together into one solution for FAA;
 - (e) More opportunities for small and small disadvantaged businesses; and
 - (f) Decreased costs.
- (3) Team arrangements may prove particularly appropriate for research and development (R&D) requirements; however they may be used in other types of acquisitions as well.
- (4) FAA will not normally require the dissolution of team arrangements.
- (5) Guidance on determining small business size standards for team arrangements can be found in AMS Procurement Guidance T3.6.1.

b. Joint Venture.

(1) A joint venture is a separate legal entity, such as a partnership or corporation, formed by two or more parties to conduct business.

(2) In a joint venture, each party contributes equity and shares:

(a) In any revenues;

(b) Expenses incurred; and

(c) In the management or control of the venture.

(3) Joint ventures may be a continuing business relationship or for just one or more projects.

c. Disclosure of Team Arrangements. In order for FAA to recognize the validity of a team arrangement, the arrangement and company relationships must be fully disclosed:

(1) In the offer; or

(2) Before the arrangement becomes effective when formed after the submission of an offer or contract award.

d. Antitrust Law and FAA Rights.

(1) All team arrangements must comply with all applicable antitrust statutes.

(2) Despite any team arrangement, FAA retains the right to:

(a) Require consent to subcontracts;

(b) Determine the responsibility of the prime contractor;

(c) Provide to the prime contractor data rights owned or controlled by the Government;

(d) Hold the prime contractor responsible for contract performance; and

(e) Apply other AMS requirements such as those for competition or subcontracting.

4 Debarment and Suspension Revised 9/2020

a. General.

(1) Debarment and suspension are discretionary actions that are appropriate means to implement FAA policy and should be undertaken only to protect the interest of FAA. Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts. FAA will not solicit offers from, award contracts to, consent to subcontracts, or conduct business with contractors that are debarred, suspended, or proposed for debarment:

- (a) In their individual capacities;
- (b) As agents or representatives of other contractors; or
- (c) As sureties on FAA contracts.

(2) *Compelling Exception.* The FAA will not conduct business with contractors that are debarred, suspended, or proposed for debarment, unless the Administrator, or designee, determines that there is a compelling reason for such action.

(3) *Debarring/Suspending Official.* The Administrator is both the debarring official and the suspending official. However, the Administrator may authorize individuals to act as the debarring or suspending official. The debarring or suspending official is the only individual with the authority to make debarment or suspension decisions.

(4) *Effect on Divisions/Affiliates.* Suspension or debarment applies to all divisions or other organizational elements of the contractor, unless the suspension or debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring and suspending official(s) may also extend the debarment decision to include any affiliates of the contractor if they are:

- (a) Specifically named;
- (b) Given written notice of the proposed debarment; and
- (c) Given written notice of an opportunity to respond.

(5) *Continuation of Current Contracts.* Contractors debarred, suspended or proposed for debarment may continue to perform current contracts or subcontracts, unless the Administrator or designee determines otherwise. However, FAA should not renew or extend the current contract period, or consent to subcontracts, with contractors debarred, suspended, or proposed for debarment unless the Administrator, or designee, determines that there are compelling reasons for renewal or extension.

(6) *Ineligible Based on Statute or Regulation.* Contractors declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts and, if applicable, subcontracts under the conditions and for the periods set forth in the statute or regulation.

(7) *Initiating the Debarment/Suspension Action.* When the CO, or requisitioner/program official, determines that cause for debarment or suspension may exist, the information together with any supporting documentation should be provided to the Assistant Chief Counsel for the Procurement Legal Division (AGC-500). AGC-500 will appoint a debarment/suspension officer to investigate whether cause for debarment or suspension exists. The FAA Acquisition Executive will have oversight responsibility and will monitor implementation of the debarment and suspension program.

(8) *The Administrative Record.* The debarment officer will assemble the Administrative Record, which is a consolidated set of records, information, and documentation that clearly demonstrates the basis for the debarment or suspension and the events and actions taken throughout the entire process such as:

- (a) Cause for debarment or suspension;
- (b) Notice of proposal to debar/suspend;
- (c) Contractor's responses, arguments, disputes;
- (d) Consideration given to contractor's responses;
- (e) Resolution of contractor's comments or disputes, etc.;
- (f) Findings of fact;
- (g) Other communications with the contractor;
- (h) Final report and recommendation to the Debarring Official/Suspending Official;
- (i) Debarring/Suspension Official determinations;
- (j) Final notice to the contractor/affiliate; and
- (k) Notice to the General Services Administration (GSA) regarding the debarment/suspension (see Notices to GSA and System for Award Management (SAM) below). The notice should include the FAA-accepted acronym "DOT- FAA."
- (l) Within 45 days of proper notification ("proper notification" is defined as: a

referral from the Office of Inspector General that includes either a copy of the Federal, State, or local indictment or civil complaint or other official correspondence or documentation evidencing the indictment or civil complaint from the Department of Justice/United States Attorney. (Internet sources and local newspaper articles as well as unverified news sources are unacceptable for documentation)), FAA will either initiate a debarment or suspension proceeding, or make a decision that a debarment or suspension is not appropriate. If a decision is made not to initiate a debarment or suspension proceeding after proper notice is received, then a justification will be made part of the written record within 45 days after proper notice.

(9) Scope of Debarment/Suspension.

(a) Fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval, or acquiescence. The contractor's acceptance of the benefits derived from the conduct should be considered as evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent criminal, or other seriously improper, conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(10) Failure to Disclose Violation of Federal Criminal Law. Whether or not AMS clause 3.2.5-13 is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until three (3) years after final payment on a contract.

b. Debarment.

(1) *Causes for Debarment.* The debarring official should debar a contractor based upon the following:

(a) Conviction of or civil judgment for:

- (i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
- (ii) Violation of Federal or State antitrust statutes relating to the submission of offers;
- (iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
- (iv) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)); or
- (v) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) A preponderance of the evidence for the following:

- (i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as:
 - (A) Willful failure to perform in accordance with the terms of one or more contracts; or
 - (B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.
- (ii) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:
 - (A) Failure to comply with the requirements of AMS Clause 3.6.3-16, Drug Free Workplace; or
 - (B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Pub. L. 102-558)).

(iv) Commission of an unfair trade practice as defined herein (see also Section 201 of the Defense Production Act (Pub. L. 102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$3,000

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(1) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) Examples.

(1) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has

exercised all judicial appeal rights.

(3) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(vi) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of:

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. § 3729-3733);

or

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments.

(c) A determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(2) Debarment Procedure

(a) *Notice Of Proposed Debarment.* If after review of the record and any additional investigation, the debarring official determines that there is sufficient cause for debarment, the debarring official must issue a Notice of Proposed Debarment to the contractor and any specifically named affiliates. The notice should be mailed by certified mail, return receipt requested, stating that debarment is being considered. The notice should also state:

- (i) The specific name the firm and any affiliate being considered for debarment;
- (ii) That debarment is being considered;
- (iii) The reasons for the proposed debarment in terms sufficient to put the contractor on notice of the conduct or transaction(s) upon which it is based;
- (iv) The cause(s) relied upon under Section 3.b, Debarment;
- (v) That within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment, including any additional specific information that raises a genuine dispute over the material facts;
- (vi) The FAA's process for completing the debarment proceeding;
- (vii) The effect of the issuance of the notice of proposed debarment on the contractor; and
- (viii) The effect of debarment on the contractor and any affiliates.

(b) *Contractor's Response to the Notice of Proposed Debarment.* The contractor's response will be reviewed to identify issues that could affect the outcome and merit further exploration.

(c) *Mitigating Factors.* The existence of a cause for debarment does not require that the contractor be debarred. The debarring official may consider the following mitigating factors, none of which is by itself dispositive, in determining whether or not to debar a contractor:

- (i) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment, or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.
- (ii) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.
- (iii) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

- (iv) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.
- (v) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
- (vi) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.
- (vii) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.
- (viii) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.
- (ix) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.
- (x) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

(d) Debarring Official's Decision.

- (i) *Actions Based Upon a Conviction or Civil Judgment or Without Genuine Dispute Over Material Facts.* In this type of action, the debarring official will consider the information in the administrative record, including any submission made by the contractor. If no suspension is in effect, the debarring official should make the decision within 30 working days after receipt of any information and argument submitted by the contractor, or within a reasonable time thereafter.
- (ii) *Actions Not Based Upon a Conviction or Civil Judgment.* Where the proposed debarment is **not** based upon a conviction, civil judgment, or indictment, or the contractor's response to the Notice of Proposed Debarment raises a genuine dispute over facts material to the proposed debarment, the debarring official may, upon the request of a contractor:

- (A) Provide the contractor an opportunity to appear informally with

counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(B) Make a transcribed record of the proceedings and make it available at cost to the contractor.

(iii) *Evidentiary Standard for Debarments not Based Upon Conviction or Civil Judgment.* In any action in which the proposed debarment is not based upon a conviction or civil judgment, the cause for debarment must be established by a preponderance of the evidence.

(iv) *Demonstrating Responsibility.* If a cause for debarment exists, the contractor has the burden of demonstrating that, notwithstanding the existence of a cause or causes for debarment, the contractor is presently responsible to perform Government contracts.

(v) *Period of Debarment.*

(A) The debarring official should consider the facts and determine a debarment period commensurate with the seriousness of the cause(s) and sufficient to protect the Government's interest. Generally, debarment should not exceed three (3) years, except that debarment for violation of the provisions of the Drug- Free Workplace Act of 1988 may be for a period not to exceed five (5) years. Debarments subject to the Immigration and Nationality Act should not exceed one (1) year and may be extended for additional periods of one (1) year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If suspension precedes a debarment, the suspension period should be considered in determining the debarment period.

(B) The debarring official should extend the period of debarment if that official determines that extension is necessary to protect the Government. However, a debarment may not be extended solely on the basis on the facts and circumstances upon which the initial debarment action was based.

(e) *Notice of Debarment to Contractor/Affiliates.*

(i) The debarring official will provide the contractor and each affiliate identified for debarment/suspension with a Notice of Debarment/Suspension by mailing the notice by certified mail, return receipt requested. The notice will:

(A) Refer to the Notice of Proposed Debarment;

(B) Specify the reasons for debarment;

(C) State the period of suspension/debarment, including effective dates; and

(D) Advise that the debarment is effective throughout the executive branch of the Government unless the debarring official determines that there are compelling reasons for FAA to continue to do business with the contractor.

(ii) *Debarment Not Imposed.* If debarment is not imposed, the debarring official will promptly notify the contractor and any affiliates involved, by certified mail, return receipt requested.

c. Suspension.

(1) *Applicability.* Suspension is appropriate when the suspending official determines that immediate action is necessary to protect the government's interest pending the completion of legal proceedings, or the agency investigation of the improper conduct.

(2) *Causes for Suspension.*

(a) The suspending official should suspend a contractor as defined herein, upon **adequate evidence**, of:

(i) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, performing a public contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(iv) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by:

(A) Failure to comply with the requirements of the AMS Clause 3.6.3-16, "Drug Free Workplace;" or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace;

(v) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when the product was not made in the United States (see section 202 of the Defense Production Act (Pub. L. 102-558));

(vi) Commission of an unfair trade practice as defined herein (see section 201 of the Defense Production Act (Pub. L. 102-558));

(vii) Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at T3.2.2.7.A.3.b.(1)(b)(i)(B)(v) for when taxes are considered delinquent;

(viii) Knowing failure by the principal, until three (3) years after the final payment on any FAA contract awarded to the contractor, to timely disclose to FAA, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of -

(A) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(B) Violation of the civil False Claims Act (31 U.S.C. 3729-3733);

(C) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments; or

(ix) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) above constitutes adequate evidence for suspension.

(c) The suspending official should upon **adequate evidence** also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

(3) Suspension Procedure.

(a) *Notice of Suspension.* If cause for suspension exists, the suspending official will issue a notice of suspension to the contractor and any specifically named affiliates, if applicable. No hearing is required prior to the imposition of suspension. The notice must be sent by certified mail, return receipt requested, and must state:

(i) That the contractor has been suspended and that the suspension is based upon an indictment or other adequate evidence that the contractor has committed irregularities of a serious nature in business dealings with the Government or seriously reflecting on the propriety of further Government dealings with the contractor. The irregularities must be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(ii) That the suspension is for a temporary period pending the completion of the investigation and such legal proceedings that may ensue;

(iii) The cause relied on for suspension (see Causes for Suspension);

(iv) The effect of the suspension on the contractor and affiliates;

(v) That within thirty (30) days after receipt of the notice, the contractor may submit in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional information that raises a genuine dispute over material facts; and

(vi) That additional proceedings may be conducted to determine disputed material facts unless:

(A) The action is based upon an indictment; or

(B) A determination is made, on the basis of Justice Department advice, that the substantial interests in the Government in a pending or contemplated legal proceeding based on the same facts as the suspension would be prejudiced.

(b) Suspending Official's Decision.

(i) In actions that are based on an indictment, in which the contractor's submission does not raise a genuine dispute over material facts, or in which the Department of Justice has denied additional proceedings to determine disputed facts, the suspending official's decision must be based on the administrative record, including any submission made by the contractor.

(ii) In actions not based upon an indictment or actions in which the Department of Justice has not denied additional proceedings, the suspending official may, upon the contractor's request, provide the contractor an opportunity to appear informally with counsel, submit documentary evidence, present witnesses, and confront any person the

agency presents. At the discretion of the suspending official, a transcribed record of the proceedings may be made and made available at cost to the contractor upon request.

(4) Other Actions by the Suspending Official.

(a) *Written Findings.* The suspending official must make written findings of fact and base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(b) *Suspending Official's.* The suspending official may modify or terminate the suspension or leave it in force. However, a decision to modify or terminate a suspension does not prevent any other agency from suspending or debaring the contractor under the same facts or circumstances.

(5) Period of Suspension.

(a) Suspensions must be for a temporary period as stated in 3.a. (ii) above unless otherwise terminated sooner by the CO. The CO must notify the Department of Justice (DOJ) of the proposed termination of the suspension at least 30 days prior to the expiration of the initial 12-month period to give DOJ an opportunity to request an extension.

(b) If legal proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for another 6 months. In no event may a suspension extend beyond 18 months, unless legal proceedings have been initiated within that period.

(6) *Notices to Contractor/Affiliates.* The suspending official must provide prompt written notice of the decision to the contractor and any affiliates involved.

5 Notices to GSA and SAM Revised 9/2020/4/2022

a. *Notice to GSA.* The appropriate CO, at the direction of the debarring/suspending official, will provide GSA the information specified below within 5 working days after a debarment/suspension is effective:

(1) The names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The name and official acronym ("DOT-FAA") of the agency or other authority taking the action;

- (3) The cause for the action other statutory or regulatory authority;
- (4) The effect of the action;
- (5) The termination date for each listing;
- (6) The ~~DUNS No.;~~Unique Entity Identifier (UEI); and
- (7) The name and telephone number of the point of contract for the action.

b. System for Award Management (SAM).

(1) GSA operates the web-based SAM. The "Exclusions" portion of the "Performance Information" capability includes the:

(a) Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the nonprocurement common rule, with cross-references when more than one name is involved in a single action;

(b) Name of the agency or other authority taking the action;

(c) Cause for the action or other statutory or regulatory authority;

(d) Effect of the action;

(e) Termination date for each listing;

~~(f) DUNS No.;~~
(f) UEI;

(g) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(h) Name and telephone number of the agency point of contact for the action.

(2) For information about adding a contractor to SAM, the CO should contact the DOT representative listed under the agency contacts on the SAM website.

6 Prohibition Against Contracting with Inverted Domestic Corporations Revised 9/2020

(a) To be eligible for a contract award, an offeror must represent it is not an inverted domestic corporation or subsidiary as defined under the "Definitions" section below. Any offeror that cannot so represent is ineligible for contract award.

(b) Contracting Officers must rigorously examine known circumstances that would lead a reasonable business person to question an offeror’s self-certification and, after consultation with legal counsel, take appropriate action when that questionable self-certification cannot be verified.

(c) *Waiver*. The FAA Administrator may waive the requirements of this Section if the FAA Administrator determines in writing that a waiver is required in the interest of national security, documents the determination, and reports it to Congress.

B Clauses

[view contract clauses](#)

C Procurement Forms Revised 4/2022

[view procurement forms](#)

D

<u>Document Name</u>

D Procurement Samples Added 4/2022

<u>Document Name</u>

E Procurement Templates Added 4/2022

<u>Document Name</u>

F Procurement Tools and Resources Added 4/2022

G Appendix 1 - Definitions Revised 4/2022

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Affiliates." Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly:

(a) Either one controls or has the power to control the other, or

(b) A third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

"Agency," as used in this subpart, means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Contractor," as used in this subpart, means any individual or other legal entity that:

(a) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(b) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.

"Debarment," as used in this subpart, means action taken by a debarring official to exclude a contractor from Government contracting and Government-approved subcontracting for a

reasonable, specified period; a contractor so excluded is "debarred."

"Debarring official" means:

- (a) An agency head; or
- (b) A designee authorized by the agency head to impose debarment.

"Deed" means a legal document conveying title to a property. The most common types of deeds, in order of most protection afforded to the Government, are:

- (a) "General Warranty Deed"- A type of deed in which the grantor fully warrants good, clear title to the premises, meaning that the title is valid and the property is clear of any liens. This is used in most real estate deed transfers, as a general warranty deed offers the greatest protection of any deed. Some states have an official form in the state's laws, commonly known as a statutory warranty deed, where the warranties are implied and are not stated within the deed.
- (b) "Specialty Warranty Deed"- Also called a limited warranty deed, is a type of deed that covers only claims incurred while the grantor has title – not any that arose before the grantor owned the property. A specialty warranty deed is often used when the grantor sells property acquired through foreclosure.
- (c) "Bargain and Sale Deed"- A type of deed wherein the grantor warrants that he/she has title to the property but does not guarantee that the property is free -from claims. These are most common when property is transferred pursuant to a foreclosure, tax sale, or settlement of the estate of a deceased person.
- (d) "Quit Claim Deed" – A type of deed wherein the grantor makes no warranties. The grantor transfers whatever ownership interest he/she has in a particular property. The deed does not guarantee anything about what is being transferred. This is the least secure type of deed

"Excluded Parties List" means a list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

"Indictment" means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

"Ineligible," as used in this subpart, means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract

Labor Standards, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

"Inverted Domestic Corporation" means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b) applied in accordance with the definitions of 6 U.S.C. 395 (c).

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"Nonprocurement Common Rule" means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means:

- (a) An agency head; or
- (b) A designee authorized by the agency head to impose suspension.

"Suspension," as used in this subpart, means action taken by a suspending official under 9.407 to disqualify a contractor temporarily from Government contracting and Government- approved subcontracting; a contractor so disqualified is "suspended."

"Unfair trade practices," as used in this subpart, means the commission of any or the following acts by a contractor:

- (a) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) as determined by the International Trade Commission.
- (b) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement.
- (c) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

Section Revised: T3.3.1 – Contractor Funding, Financing & Payment

Procurement Guidance - (~~1/2022~~4/2022)

T3.3.1 - Contract Funding, Financing & Payment Revised 8/2009

A Contract Funding, Financing & Payment

1 Contract Funding Revised 7/2013

2 Continuing Resolution Revised 10/2007

3 Electronic Funds Transfer Revised 1/2021

4 System for Award Management (SAM) Revised ~~9/2021~~4/2022

5 Types of Payment Revised 9/2020

6 Single and Partial Payments Revised 9/2020

7 Progress Payments Revised 10/2007

8 Recurring, Provisional, and Advance Payments Revised 9/2020

9 Performance-based Payments Revised 4/2017

10 Financing Payment Revised 10/2010

11 Withholding Payment Added 10/2007

12 Prompt Payment Revised 9/2021

13 Fast Payment Added 10/2007

14 Invoices Revised 1/2021

15 Electronic Payment Requests -Invoices (eInvoicing) Revised 1/2021

16 Debt Collection Revised 9/2021

17 Assignment of Claims Revised 9/2021

18 Automatic Deobligation Revised 1/2021

19 Incremental Funding for Fixed-Price Contracts Revised 1/2021

B Clauses

C Procurement Forms Revised 9/2021

D Procurement Samples Revised 9/2021

E Procurement Templates Added 9/2021

F Procurement Tools and Resources Added 9/2021

T3.3.1 - Contract Funding, Financing & Payment Revised 8/2009

A Contract Funding, Financing & Payment

1 Contract Funding Revised 7/2013

a. *Anti-Deficiency Act.* The FAA must comply with the Anti-Deficiency Act (31 U.S.C. 1341) and all other fiscal laws. The Anti-Deficiency Act prohibits FAA from creating or authorizing an obligation in excess of the funds available, or in advance of appropriations, unless otherwise authorized by law. The Act applies to all forms of procurement, including contracts and purchase card transactions.

b. *Funds Availability.* Before executing a contractual instrument that obligates funds, the Contracting Officer (CO) must ensure sufficient funds are available. The CO must obtain written assurance from the program/requisitioning office that funds are available.

c. *Awards Subject to Availability of Funds.* There may be times when a contract will be awarded before funds become available, such as an award for services to begin at the beginning of the next fiscal year. When this occurs, the contractor must be put on notice that the award is subject to the availability of funds; the CO must incorporate AMS Clause 3.3.1-10, Availability of Funds, or AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year, into the SIR or contract.

d. *Services Crossing Fiscal Years.* The FAA may enter into contracts for severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

e. *Distribution to Accounting Office.* The CO should provide copies of all contract awards and modifications to the accounting office to ensure that it can properly document and track payments and available funding.

f. *Timely Deobligation of Unused Funds.* The CO and program office are encouraged to periodically review the funding allocated to each contract or order upon the completion of each contract period, option period or upon completion of a contract line item. The review is intended to determine whether contract line items contain unused funds that can be deobligated. Determining whether funds can be deobligated as soon as possible after each contract period or completion of contract line items helps minimize costs associated with contract administration and the contract closeout processes. Timely deobligation of unused funds also allows for the possible use of those funds elsewhere.

2 Continuing Resolution Revised 10/2007

a. *Description.* A continuing resolution (CR) is a type of appropriations legislation to temporarily fund Government operations and programs when a formal appropriation bill(s) has not been signed into law before the start of a new fiscal year. A CR funds existing operations and programs at current or reduced levels for a stated period of time. The stated period time could range from

several weeks to many months. Generally, a CR funds only on-going operations, and does not fund new initiatives or expanded scope for existing programs.

b. *Subject to the Availability of Funds and CR.* To allow for the solicitation of requirements before funds becoming available, the CO may issue a SIR with clauses that expressly condition FAA's obligation under the contract upon the availability of funds. (See Contract Funding above for more information).

c. *Coordination.* To ensure available funding is not exceeded and to comply with conditions under a CR, the CO should consult with:

(1) Legal Counsel. Legal counsel's review a proposed procurement action will ensure that award complies with CR conditions;

(2) Budget and Finance. To ensure that procurement activity complies with FAA's overall budget allowance during a CR, the CO should consult with the budget or finance office or review any fiscal or CR guidance before award; and

(3) Program Office. Because a CR affects the overall operations and planning of FAA programs, the CO should coordinate with the program office to ensure that an award is within their available budget.

3 Electronic Funds Transfer Revised 1/2021

a. Electronic Funds Transfer (EFT) applies to all new contract awards and contract modifications executed, unless extenuating circumstances exist as described below.

b. The FAA will protect against improper disclosure of a contractor's EFT information.

c. 31 U.S.C. 3332 requires all payments to be made through EFT. The Manager, ESC Financial Services Division, AMK-300, may determine that submission of EFT information is not required and grant an EFT waiver if a vendor meets one of the exceptions listed below:

(1) Contracts awarded by COs outside the United States and Puerto Rico may provide for payment by other than EFT when EFT payments are not supported by the foreign country. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(2) Contracts paid in other than U.S. currency may provide for payment by other than EFT. EFT payment may still be used, if the political, financial and communications infrastructure in the foreign country supports payment by EFT or payments in other than U.S. currency may be made safely;

(3) Classified contracts when EFT payments could compromise the safeguarding of

classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(4) Contracts executed by deployed COs in the course of military operations, including but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) where:

(a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(5) Contracts executed by any CO conducting emergency operations, such as responses to natural disasters or national or civil emergencies, may provide for payments by other than EFT where:

(a) EFT payment is not known to be possible; or (b) EFT payment would not support the objectives of the operation.

(6) When FAA does not expect to make more than one payment to the same recipient within a one-year period and the payment is non-recurring;

(7) When FAA's need for goods or services is of such unusual and compelling urgency that FAA would be seriously injured unless payment is made by a method other than EFT;

(8) Contracts where the contractor claims that payment by EFT would impose a hardship due to a mental disability or a geographic barrier.

d. *Waiver requests.* The ESC Financial Services Division will review and approve or disapprove all vendor requests for exceptions to the EFT payment requirement. The waiver process for EFT payments is:

(1) The CO provides the applicable EFT clauses as part of the solicitation package.

(2) If the otherwise successful offeror claims an inability to comply with the EFT requirement, the CO requests that vendor complete an Electronic Funds Transfer (EFT) Waiver Request Form (see AMS Procurement Forms). The waiver request includes the contractor's justification for not receiving payment by EFT. The CO forwards the waiver request, together with a recommendation and the completed DELPHI Vendor Entry Worksheet (see the PRISM website (FAA only) to the ESC Financial Services Division, AMK-300.

(3) The ESC Financial Services Division approves or disapproves the waiver in writing and returns the signed determination to the CO. The waiver determination includes recommendations to assist the vendor become capable of receiving EFT payments. The CO retains a copy of the waiver request disposition in the contract file.

(4) If the waiver is disapproved, the CO may consult with the Accounts Payable manager for further guidance.

4 System for Award Management (SAM) Revised 9/20214/2022

a. System for Award Management (SAM) applies to all new contract awards, contract modifications, agreements, orders, or leases executed. SAM is the primary Government repository for contractor information required for doing business with the Government. SAM requires a ~~Data Universal Numbering System (DUNS) number~~ Unique Entity Identifier (UEI) (also referred to as the Unique Entity ID) for registration. The ~~DUNS~~ UEI is the 9-digit number assigned by ~~Dun and Bradstreet, Inc. (D&B)~~ SAM to identify unique business entities. ~~Data Universal Numbering System +4 (DUNS +4) number~~ Electronic Fund Transfer (EFT) indicator means ~~the DUNS number assigned by D&B plus a 4-character suffix to the UEI~~ that may be assigned by a business concern. This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative ~~Electronic Funds Transfer (EFT)~~ accounts for the same parent concern. Registered in the SAM database means that the contractor has entered all mandatory information, including the ~~DUNS number~~ UEI or ~~the DUNS +4 number~~ EFT indicator, into the SAM database.

b. Prospective contractors must be registered in the SAM database before award of a contract or agreement, except for:

- (1) Purchases made by using a Government purchase card;
- (2) Classified contracts when registration in the SAM database, or use of SAM data, could compromise the safeguarding of classified information or national security;
- (3) Contracts awarded by:
 - (a) Deployed COs in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13) or humanitarian or peacekeeping operations as defined in 10 U.S.C. 2302(7); or
 - (b) COs conducting emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121);
- (4) Contracts to support unusual or compelling needs. A compelling need is where FAA would be seriously injured if the contract is not awarded;
- (5) Awards made to foreign vendors for work performed outside the United States, if it is impractical to obtain SAM registration;
- (6) One time/single payment contracts or agreements, such as Real Property purchase and sales agreements, where the seller of the property is not in the practice of offering real property to FAA as a commercial practice and does not anticipate acting as a vendor to FAA in the foreseeable future; or

(7) Long term leases and utility contracts where a SAM clause is not currently in effect and it is determined by the CO that forcing compliance is impractical.

c. In contracts or agreements awarded under paragraph (b) (3) or (4) of this section, the CO should modify the contract or agreement to require SAM registration as soon as practical after award is made.

d. *Change of Name in SAM.*

(1) The contractor must provide the responsible CO a minimum of one business day's written notification of its intention to change its business name in the SAM database, comply with the requirements of a novation or change of name agreement in AMS Procurement Guidance, and agree in writing to the timeline and procedures specified by the responsible CO for the change. The contractor must provide the CO documentation to support the legally changed name. This notification is required when the contractor has:

(a) Legally changed its business name;

(b) Changed its "doing business as" name;

(c) Changed its division name; or

(d) Transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in AMS Procurement Guidance.

(2) If the contractor fails to comply with the requirements AMS Clause 3.3.1-33 (Real Property 6.4.1-1), System for Award Management, and has not provided a properly executed novation or change- of-name agreement, the SAM information that shows the contractor to be other than the contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of AMS Clause 3.3.1-34 (Real Property 6.4.2-1), Payment by Electronic Funds Transfer/System for Award Management. If the contractor's EFT information in SAM is considered to be incorrect:

(a) FAA need not make payment to the contractor until correct EFT information is entered into the SAM database; and

(b) Any invoice or contract financing request must be deemed not to be a proper invoice for the purpose of prompt payment under the contract.

(3) The contractor may not change the name or address for electronic funds transfer payments (EFT) or manual payments, as appropriate, in the SAM record unless an assignment of claims has been properly executed. (See AMS Procurement Guidance T3.3.1, Assignment of Claims)

(4) Assignees must be separately registered in the SAM database. Information provided to the contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of AMS Clause 3.3.1-34 (Real Property 6.4.2-1), Payment by Electronic Funds Transfer/System for Award Management.

e. Unless the acquisition is exempt, the CO:

(1) Must verify that the prospective contractor is registered in the SAM database before awarding a contract or agreement;

(2) Should use the ~~DUNS number or, if applicable, the DUNS+4 number~~, UEI to verify registration on the SAM website.

~~(a) On the SAM website; or~~

~~(b) By calling toll-free: 1-888-227-2423, commercial: (269)-961-5757.~~

(3) When a CO modifies an existing contract or agreement that does not already include the requirement to be registered in SAM, the CO must then incorporate, as appropriate, AMS Clause 3.3.1-33, System for Award Management.

(4) Need not verify registration before placing an order or call if the contract or agreement includes the clause at AMS Clause 3.3.1-33 (Real Property 6.4.1-1).

f. If the CO, when awarding a contract or agreement, determines that a prospective contractor is not registered in SAM and an exception to the registration requirements for the award does not apply, the CO:

(1) Determines if the needs of the requiring activity allow for a delay. If a delay is allowable, the CO advises the apparently successful offeror of the required date to become registered. If the offeror does not become registered by the required date, the CO, after consultation with the program office, proceeds to award to the next otherwise successful registered offeror following the same procedures (i.e., if the next apparently successful offeror is not registered, the CO must advise the offeror of the required date to become registered, etc.); or

(2) Determines if the needs of the requiring activity do not allow for a delay. If the needs do not reasonably allow for a delay, the CO will proceed to award to the next otherwise successful registered offeror. Written approval is required at one level above the CO.

g. The FAA must protect against improper disclosure of contractor SAM information.

h. In accordance with FAA procedures, the CO provides the ~~DUNS number~~UEI or, if applicable, the ~~DUNS+4~~EFT indicator on contractual documents transmitted to the payment office.

5 Types of Payment Revised 9/2020

a. *Types of Payments for Products, Services, and Construction*

- (1) Payment provisions should balance protection of FAA's interests against adequately compensating the contractor for products delivered or services performed, including construction.
- (2) COs should maintain a payment log for each contract detailing funding and payment information, i.e., a log showing available funding, date and amount of invoices, balance of funding after payments, etc). This log should be filed in the official contract file.
- (3) COs should consider the following alternatives when establishing a basis for payment in award documents:

Type of Payment	Description
Single Payment (Lump Sum)	Where one payment is made to a contractor after completion and acceptance of all work. (Preferred method)
Partial Payment	Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.
Progress Payment	Multiple payments made prior to delivery during performance based on a percentage or stage of completion.
Recurring Payment	Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.
Provisional Payment	Payments made for the delivery or performance of products or services recurring under a contract.
Advance Payment	Payment made before any performance of work under the contract. Payment should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. Considered to be contract financing, advance payments are the least preferred and must be authorized sparingly.
Performance-Based Payment	Contract financing payments that are not payments for accepted items.
Financing Payment	Payment to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments. FAA may only use the methods for financing of contractor working capital.

b. *Type of Payment for Real Property*

COs should consider the following alternatives when establishing a basis for payment in real property award documents:

Type of Payment	Description
Single Payment (Lump Sum)	Where one payment is made to a contractor after completion and acceptance of all work. (Preferred method)
Recurring Payments (Automatic Payments)	Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products or services.

6 Single and Partial Payments Revised 9/2020

a. *Single Payments (Lump Sum).*

(1) Where one payment is made to a contractor after completion and acceptance of all work or delivery of real property interest.

(2) The preferred method as FAA only makes payment after acceptance of all contract work (minimal risk).

b. *Partial Payments.*

(1) Payments authorized to be made upon acceptance of one or more complete units (or one or more distinct items of service) called for under a contract.

(2) Despite partial payments being generally treated as a method of payment rather than a method of contract financing, the use of partial payments can provide the assistance necessary for some contractors to participate in FAA contracts.

(3) Circumstances where partial payments should be prohibited include:

(a) When the additional administrative time required to issue 2 or more payments may not be cost effective.

(b) When partial delivery of individual components does not constitute a usable item on its own.

7 Progress Payments Revised 10/2007

a. *Definition.* Progress payments consist of multiple payments made during performance and prior to delivery based on a percentage or stage of completion. Payments must be secured against materials/equipment purchased until liquidated by deliveries under the contract.

b. *Basis.* FAA will make progress payments on the basis of percentage or stage of completion. Typical progress payment provisions call for payment of part of the contract price only when a completed stage of work (milestone) or a completed component can be said to be of value to FAA in the event the contract were to be terminated at that point; however, progress payment schedules can be established that will allow payment based on an estimated percentage of completion. Generally, the progress payment rate to the prime contractor is 80% of the total costs of performing the contract and 85% for small businesses. The CO should provide for progress payments if the contractor:

- (1) Will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work is scheduled to begin; and
- (2) Will make expenditures for contract performance during the pre-delivery period that have a significant impact on the contractor's working capital.

c. *Withholding payment.* When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit. Any clearly proper and due amounts should be paid without awaiting resolution of the differences. Post payment reviews may be made when considered desirable by the CO to determine the validity of progress payments already made and those expected to be made in the future. The post payment review should include a review of whether or not the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion.

d. *Subcontracts.* The CO should encourage contractors to provide progress payments to subcontractors subject to the bases described in subparagraph (b), "Basis." The CO should consider the following when contractors submit payment requests that include progress payments for subcontractors:

- (1) The contractor's request for payment may include the full amount paid to subcontractors as progress payments;
- (2) The contractor's inclusion of the substance of clause "Progress Payments" in the prime contract, modified to indicate that:
 - (a) The contractor, not FAA, awards the subcontract and administers the progress payments;
 - (b) Title will vest in FAA, not the contractor;
 - (c) The subcontractor will install the necessary management control systems, including internal audit procedures; and
 - (d) The subcontractor will allow the CO/FAA access to reports and records.

The CO should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract.

(3) If the contractor makes progress payments to a subcontractor under a cost- reimbursement prime contract, the CO may accept the progress payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made in accordance with this subparagraph (d), "Subcontracts;"

(b) The subcontractor complies with relevant liquidation principles;

(c) The subcontract contains progress payments terms as defined in this section; and

(d) The subcontractor has established a FAA-approved job cost accounting system that is satisfactory for cost reimbursement contracts.

(4) If there is adequate protection to FAA through inclusion of appropriate clauses in subcontracts involving foreign subcontractor.

8 Recurring, Provisional, and Advance Payments Revised 9/2020

a. *Recurring Payments (Automatic Payments).* Payments made on a fixed, periodic basis for the delivery or performance of recurring firm fixed-price products, services, or real property.

(1) COs must annotate on the award that payments are to be setup on the Recurring Invoice Template (auto pay).

(2) The CO must request an annual invoice from the contractor detailing the recurring fixed amount and the total amount. This annual invoice must be certified by the CO and submitted to accounting.

(3) If deductions are required, the CO must notify the accounting office in writing of the deduction to be made the following month, and the contract will be modified to reflect the change in value.

b. *Provisional Payments.* Payments made for the delivery or performance of products or services recurring under a contract. Invoices are necessary, receiving reports are not.

c. *Advance Payments.* Payment made before any performance of work under the contract. Payments should be secured by bond or collateral with expenditures made from a joint account requiring FAA approval. (See Finance under this section for more information)

9 Performance-based Payments Revised 4/2017

a. *General.*

(1) Performance-based payments (PBP) are contract financing payments that are not payments for accepted items. The CO may use PBP in contracts, subject to the guidelines below, when the CO finds them practical and the contractor agrees to their use. (2) PBP do not apply to the following:

(a) Payments under cost-reimbursement contracts;

(b) Contracts for architect-engineer services or construction, when the contracts provide for progress payments based upon a percentage or stage of completion;

(c) Contracts for research or development; or

(d) Contracts awarded through sealed bid.

(3) PBP are fully recoverable, in the same manner as progress payments, in the event of default. PBP should not be used when other forms of contract financing are provided.

(4) For accounting purposes, PBP should be treated like progress payments based on costs.

(5) Because PBP are contract financing payments they are not subject to the interest-penalty provisions of prompt payment clauses; however, PBP should be made in accordance with FAA's policy for prompt payment of contract financing payments.

b. *Criteria for use.*

(1) PBP should be used only if the following conditions are met:

(a) The CO and offeror are able to agree on the performance-based payment terms;

(b) The contract is a definitized fixed-price type contract; and

(c) The contract does not provide for other methods of contract financing.

c. *Application.* The CO should determine if PBP will be made either on a whole contract or deliverable item basis. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item.

A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of \$1,000,000 each, has ten deliverable items (the separate planes). A contract line item for 1 lot of 10 airplanes, with a lot price of \$10,000,000, has only one deliverable item (the lot).

d. *Establishing Performance Bases.* PBP may be made on any of the following bases:

(1) Specifically described events (e.g., milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment will be an integral and necessary part of contract performance and will be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions will not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but successful performance of each such event or performance criterion will be readily verifiable.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. In contrast, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event or criterion. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The following will be included in the contract:

(a) The contract will not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(b) Severable events or criteria will be specifically identified in the contract.

(c) The contract will identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(d) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion will be part of the performance necessary for that deliverable item and will be identified to a specific contract line item or subline item.

e. *Establishing Performance-based Finance Payment Amounts.*

(1) The CO will establish a complete, fully-defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the CO responsible for pricing the contract modification will adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments will not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis. The

amount of each performance-based payment will be specifically stated either as a dollar amount or as a percentage of a specifically identified price (e.g., contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the CO has wide discretion as to the timing and amount of the performance-based payments, the CO must ensure that the total contract price is fair and reasonable. This fair and reasonable determination must consider all pertinent factors, including the financing costs to the Treasury of the performance-based payments. Performance-based payment amounts may be established on any rational basis determined by the CO or agency procedures, which may include (but are not limited to):

- (a) Engineering estimates of stages of completion;
- (b) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or
- (c) The estimated projected cost of performance of particular events.

(3) When subsequent contract modifications are issued, the performance-based payment schedule will be adjusted as necessary to reflect the actions required by those contract modifications.

f. Instructions for Multiple Appropriations. If there is more than one appropriation account (or subaccount) funding payments on the contract, the CO will provide instructions to the payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

g. Liquidating Performance-based Finance Payments. Performance-based amounts will be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The CO will specify the liquidation rate or designated dollar amount in the contract. The method of liquidation will ensure complete liquidation no later than final payment.

- (1) If the performance-based payments are established on a delivery item basis, the liquidation amount for each line item will be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.
- (2) If the performance-based finance payments are on a whole contract basis, liquidation will be by predesignated liquidation amounts or liquidation percentages.

h. Reviews. The CO is responsible for determining what reviews are required for protection of FAA interests. The CO should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to FAA, post-payment reviews and verifications should normally be arranged as considered appropriate by the CO. If considered necessary by the CO, pre-payment reviews may be required.

i. *Incomplete Performance.* The CO will not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the CO will not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

j. *Government-caused Delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the CO may renegotiate the performance-based payment schedule to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

k. *Suspension or Reduction of Performance-based Payments.*

(1) *Enforcing the Clause.*

(a) The Progress Payments clause provides the CO the right to reduce or suspend progress payments, or to increase the liquidation rate under certain conditions; however, the CO should take these actions only in accordance with the contract terms and never precipitately or arbitrarily. These actions should be taken only after:

(i) Notifying the contractor of the intended action and providing an opportunity for discussion;

(ii) Evaluating the effect of the action on the contractor's operations, based on the contractor's financial condition, projected cash requirements, and the existing or available credit arrangements; and

(iii) Considering the general equities of the particular situation.

(b) The CO should take immediate unilateral action only if warranted by circumstances such as overpayments or unsatisfactory contract performance.

(c) In all cases, the CO should:

(i) Act fairly and reasonably;

(ii) Base decisions on substantial evidence; and

(iii) Document the contract file. Findings made under the Progress Payments clause should be in writing.

(2) *Contractor Noncompliance.*

(a) The contractor must comply with all material requirements of the contract. This

includes the requirement to maintain an efficient and reliable accounting system and controls, adequate for the proper administration of progress payments. If the system or controls are deemed inadequate, progress payments should be suspended (or the portion of progress payments associated with the unacceptable portion of the contractor's accounting system should be suspended) until the necessary changes have been made.

(b) If the contractor fails to comply with the contract without fault or negligence, the CO will not take action permitted by Progress Payments clause, other than to correct overpayments and collect amounts due from the contractor.

(3) Unsatisfactory financial condition.

(a) If the CO finds that contract performance (including full liquidation of progress payments) is endangered by the contractor's financial condition, or by a failure to make progress, the CO should require the contractor to make additional operating or financial arrangements adequate for completing the contract without loss to FAA.

(b) If the CO concludes that further progress payments would increase the probable loss to FAA, the CO should suspend progress payments and all other payments until the unliquidated balance of progress payments is eliminated.

(4) Delinquency in payment of costs of performance.

(a) If the contractor is delinquent in paying the costs of contract performance in the ordinary course of business, the CO should evaluate whether the delinquency is caused by an unsatisfactory financial condition and, if so, should apply the guidance in paragraph (c) of this section. If the contractor's financial condition is satisfactory, the CO should not deny progress payments if the contractor agrees to:

- (i) Cure the payment delinquencies;
- (ii) Avoid further delinquencies; and
- (iii) Make additional arrangements adequate for completing the contract without loss to FAA.

(b) If the contractor has, in good faith, disputed amounts claimed by subcontractors, suppliers, or others, the CO should not consider the payments delinquent until the amounts due are established by the parties through litigation or arbitration; however, the amounts should be excluded from costs eligible for progress payments so long as they are disputed.

(c) Determinations of delinquency in making contributions under employee pension, profit sharing, or stock ownership plans, and exclusion of costs for such contributions

from progress payment requests should be in accordance with the procedures for progress payments.

1. *Title.*

(1) The CO must ensure that FAA title under the provisions of the Performance-Based Payments clause is not compromised by other encumbrances. Ordinarily, the CO, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(2) If the CO becomes aware of any arrangement or condition that would impair FAA's title to the property affected by the Performance-Based Payments clause, the CO should require additional protective provisions.

(3) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the CO may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the CO should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, False Claims Act.

m. *Risk of Loss.*

(1) Under the Performance-Based Payments clause, the contractor bears the risk for loss, theft, destruction, or damage to property, except for normal spoilage, affected by the clause even though title is vested in FAA. The clauses related to performance-based payments, default, and terminations do not constitute an assumption of risk by FAA, unless FAA has expressly assumed this risk.

(2) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay FAA the performance-based payments related to the property.

(3) The contractor is not obligated to pay for the loss of property for which FAA has assumed the risk of loss; however, a serious loss may impede the satisfactory progress of contract performance, so that the CO may need to act under the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which FAA has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

10 Financing Payment Revised 10/2010

a. Prudent contract financing can be a useful working tool in FAA acquisitions. FAA financing may

be provided only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Any undue risk of monetary loss to FAA through the financing must be avoided.

b. "Contract financing" is a contractual authorization for payments to a contractor prior to acceptance of products or services by FAA. Contract financing includes advance payments.

c. Contract financing methods are intended to be self-liquidating through contract performance. FAA may only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets.

d. Advance payments are the least preferred method of contract financing and must be authorized sparingly. They should be authorized only if partial payments or progress payments are not feasible and private financing is not reasonably available.

(1) Payments under time-and-material or cost-reimbursement contracts made to small businesses in advance of payment to their vendors or subcontractors are not considered advance payments under this subpart. The items authorized for advance payment below do not require additional review and approval, while all others not identified below require submittal to the Chief of the Contracting Office (COCO) for approval:

- (a) Rent (leases, and rental agreements, including meeting and lodging room rentals);
- (b) Tuition and conference registration fees;
- (c) Insurance premiums;
- (d) Extension or connection of public utilities for FAA buildings or installations;
- (e) Subscriptions to publications - interpreted to include electronic methods of data recording. Software subscription services are therefore authorized;
- (f) Purchases of products or services in foreign countries and the advance payment is required by the laws or regulations of the foreign country concerned;
- (g) Advance payments to Federal agencies;
- (h) Advance payments that do not exceed \$15,000 or an equivalent amount in foreign currency;
- (i) Expense of investigations in foreign countries;
- (j) Enforcement of the customs or narcotics laws; or

(k) Other types of transactions excluded by agency procedures under statutory authority.

(2) The CO should transmit the following together with a recommendation of approval of a contractor's request for advance payment to the COCO:

(a) A summary of the solicitation or contract requirements;

(b) Comments on the contractor's need for advance payments and potential benefits to FAA from providing advance payments;

(c) CO's proposed actions to minimize FAA's risk of loss including proposed advance payment contract terms; and

(d) Justification of any proposal for waiver of interest charges.

(3) FAA should charge interest on advance payments received in excess of the Contractor's current needs, except for awards made to state governments, or instrumentalities thereof. The interest will be charged at the Department of Treasury current value of funds rate. The COCO may authorize advance payments without interest if in FAA's interest.

(4) Letters of Credit are not authorized at FAA.

(5) Payments will be made by electronic funds transfer whenever possible. The advance financing arrangement may be terminated if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In lieu of termination, the CO will require the contractor to not request FAA funds until the contractor's checks are ready to be forwarded to the payees. Advance payments may be processed as follows:

(a) 30-Day Advance: The contractor is authorized to request, in writing, FAA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The contractor's request typically requires 30 calendar days for processing. The 30-day advance is the preferred method of providing advance funds to a contractor.

(b) 3-Day Advance: The contractor is authorized to request FAA funds in amounts needed to cover its own disbursements of cash in the next 3 working days for contract performance. When this payment method is selected, FAA will deposit funds in the contractor's designated account within 3 working days after receipt of the request by the FAA accounting office. This method of providing advance funds to a contractor is the least preferred method and will be used sparingly.

11 Withholding Payment Added 10/2007

a. The CO should not routinely withhold funds from contractor payments. A withholding should be considered only when:

(1) Satisfactory progress has not been achieved by a contractor during any period for which a payment is to be made; or

(2) The CO expects difficulty in the timely and complete receipt of information required by the contract.

b. Withholding should not be used as a substitute for good contract management, and COs should not withhold funds without cause.

c. Decisions to withhold and the specific amount to be withheld must be made by the CO on a case-by-case basis. Such decisions must be based on the CO's assessment of past performance and the likelihood that such unsatisfactory performance will continue.

d. The CO should notify the contractor in writing when withholding funds. The notice should include:

(1) The amount to be withheld;

(2) The specific cause for the withholding; and

(3) Any remedial actions that can be taken by the contractor in order to receive payment of the funds withheld.

e. Generally, the CO should not withhold an amount greater than 10% of the contract value and may withhold only in those specific instances where the CO has determined, in writing, that it is necessary to protect the interests of FAA.

f. Upon completion of all contract requirements, withheld amounts should be promptly released for payment.

12 Prompt Payment Revised 9/2021

a. *Prompt Payment for Products, Services, and Construction.*

(1) *Discount for Prompt Payment.* The CO is encouraged to include meaningful discounts for prompt payment in contracts whenever possible. Decisions to accept or not accept a prompt payment discount are made by the cognizant accounting office based on the value of the discount offered. There is no minimum time period for which discounts will be taken. Any discount will be taken if determined cost effective by the accounting office.

(2) *Due Date for Payment.* For the sole purpose of computing an interest penalty that might be

due the contractor, the CO may establish a period for constructive acceptance of products and services that reflects the minimum necessary for inspection or testing. The period should be within seven (7) days after the contractor has delivered products or performed services in accordance with the terms and conditions of the contract. The CO may negotiate a longer period of acceptance, which must be stated in the contract.

(a) The due date for most invoice payments, (e.g. single [lump sum] payments, partial payments, etc.) will be not later than the 30th day after FAA receives a proper invoice as designated in the contract, or not later than the 30th day after products are delivered or services rendered to FAA acceptance point, whichever is later. Longer due dates may be specified for inspection, demonstrations or timed events.

(i) To the extent practicable, all invoices for contracts with small businesses will be paid not later than the 15th day after receipt of a proper invoice, rather than the 30th day as specified above. This accelerated payment to small businesses does not in any way modify the payment due date (30th day) for applying the Prompt Payment late payment interest penalty provisions as specified in paragraph c. "Interest" below.

(ii) For all new awards, the CO must indicate in PRISM whether the contractor is a small business by checking "Y" or "N" in the respective box. If a contractor is a small business, the accelerated payment terms must also be indicated. For existing awards, Accounting and Contracts will be provided a listing of all existing small business awards converted to accelerated payment.

(iii) On a temporary basis, invoice payments for all contracts are being accelerated to the extent practicable using the same methodology as described under b.(1)(a) above to facilitate the payment of small business subcontractors. AMS Clause 3.3.1-20 "Providing Accelerated Payment to Small Business Subcontractors" is required for all SIRs and contracts. The clause may also be added to existing contracts.

(b) For all progress payments except construction, the due date will be not later than the 30th day after FAA approval of contractor estimates of work or of services accomplished. For the sole purpose of computing interest penalties due the contractor, FAA approval may be deemed to have occurred constructively on the 7th day after the contractor estimates are received with all necessary supporting documentation by FAA.

(c) Progress payments under construction contracts will be due not later than the 14th day after receipt of a proper invoice (including required supporting documentation as designated in the contract). The CO has the discretion to specify a longer period (a period longer than 30 days may not be prescribed) if more time is required to afford FAA a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(d) For payment of any amounts retained by the CO, the due date will be not later than the 30th day after approval by the CO for release to the contractor. There is no provision for constructive acceptance.

(e) Final invoice payments will be due not later than the 30th day after FAA receives a proper invoice in the designated billing office, or not later than the 30th day after FAA acceptance of the work or services, whichever is later. For the contractor's final invoice where the payment amount is subject to contract settlement actions, acceptance should be deemed to have occurred on the effective date of the contract settlement.

(3) *Interest.*

(a) The contractor is entitled to interest penalties if payments are made after the payment due date. The FAA may automatically pay interest without request from the contractor, when all of the following conditions, if applicable, have been met:

(i) A proper invoice as specified in the contract has been received;

(ii) There is no disagreement over quantity, quality, or contractor compliance with any contract requirement;

(iii) In the case of a final invoice, the payment amount is not subject to further contract settlement actions between FAA and the contractor;

(iv) FAA paid the contractor after the due date;

(v) Interest owed is over \$1.00 in value; and

(vi) No off-set action has been filed by an appropriate Federal jurisdiction (such as IRS or DOL).

(b) Interest is not required on payment delays due to:

(i) Defective invoices

(ii) Disagreement between FAA and contractor over payment amount;

(iii) Issues involving contract compliance; or

(iv) Amounts temporarily withheld or retained in accordance with the terms of the contract.

(c) No interest will be paid to the contractor as a result of delayed contract financing payments.

(d) The interest paid will be at the rate established by the Secretary of the

Treasury referred to as the "Renegotiation Board Interest Rate."

(e) Interest will not accrue for more than one year.

(4) *Interim Voucher for Time-and-Material, Labor-Hour, and Cost Reimbursement Services.*

(a) Contractors awarded time-and-material (T&M), labor-hour (LH), or cost reimbursement contracts are generally authorized to seek payment during the course of the contract.

(b) An interim voucher is a contractor's request for payment during the course of performance under a T&M, LH, or cost reimbursement contract, but excluding the final payment. Interim vouchers are considered a form of contract financing; however, interest penalties must be paid on late payments for interim vouchers under T&M, LH, or cost reimbursement service contracts.

(c) For purposes of computing late payment interest penalties for interim vouchers, the due date for payment is the 30th day after FAA receives a proper invoice.

(d) If the invoice is found to be improper, it must be returned within 7 days after the date FAA receives the invoice.

(5). *Acceptance.* For payment purposes, FAA acceptance must be documented in a timely manner as the goods and/or services are received through the PRISM acceptance process.

When COs create awards in PRISM, they will be required to select whether the invoice matching for payment in DELPHI will be Two (2) or Three (3) Way match. Detailed information on invoice matching and acceptance requirements can be found on the PRISM website.

(a) Three (3) Way match: 3-Way match requires the presence of an award, an invoice, and the acceptance of the good(s) and/or services, by line, in PRISM. The acceptance of the good(s) and/or services in PRISM must annotate the date(s) good(s) were delivered or the services were provided as well as the date(s) of acceptance, where applicable. Most awards will be on a 3-Way match basis except those authorized for a 2-Way match as specified under (b)

(b) Two (2) Way match: 2-Way match requires the presence of an award and invoice without the need for manual acceptance in PRISM, and is authorized for the following types of procurements:

- (i) Awards that include Fast Payment procedures;
- (ii) Awards for services placed on Recurring Payment; and
- (iii) Leases and utilities.

b. *Prompt Payment for Real Property*

For real property contracts, the FAA should make payments in arrears or as provided in the contract, without the submission of invoices or vouchers. The CO has discretion in applying late payment interest to payments made within the scope of real property contracting actions.

13 Fast Payment Added 10/2007

a. Fast payment procedures may be included SIRs and contracts when it may not be possible for the receiving location to make timely notice to the payment office that supplies are accepted. In order for fast payment procedures to be authorized by the CO:

- (1) The SIR or contract must be firm fixed-price;
- (2) Title must vest in the FAA upon shipment or receipt;
- (3) The supplier must agree to replace or repair supplies damaged in transit or not conforming to contract requirements; and
- (4) Safeguards must be in place to ensure supplies are shipped, received, and acceptable.

b. Invoices will be paid on the basis of the contractor's delivery of supplies to a post office or common carrier for shipment to the specific destination.

c. For supplies delivered by means other than the Postal Service or common carrier, invoices will be paid on the basis of first receipt of the supplies by FAA.

d. The CO has 180 days from the date title to the supplies vests in FAA to instruct the contractor to replace, repair, or correct nonconforming supplies at the contractor's expense.

e. All invoices and shipping containers must be marked "FAST PAY."

14 Invoices Revised 1/2021

(This section applies to contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests – Invoices (eInvoicing))

a. *Proper Invoice.*

- (1) For FAA to make payment under a contract, a proper invoice must be submitted to FAA by the contractor. If the invoice does not meet the definition of a proper invoice per section (2) below, it must be rejected within seven (7) days of receipt.

(2) A proper invoice contains the following:

- (a) Name and address of contractor;
- (b) Invoice date;
- (c) Contract number (to include applicable order numbers and Contract Line Item Numbers (CLINs);
- (d) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed;
- (e) Shipping and payment terms, to include, when applicable:
 - (i) Shipment number and date of shipment,
 - (ii) Bill of lading number and weight (for government bills of lading), and
 - (iii) Prompt payment discount terms.
- (f) Contractor or bank address where electronic payment is to be sent;
- (g) Name, title, phone number, and mailing address of person to be notified of a defective invoice;
- (h) Other information required by the contract (i.e. certified payrolls, evidence of shipment, etc); and
- (i) Invoice number, account number, and/or any other identifying number agreed under the contract.

b. Invoice Routing and Acceptance.

- (1) All contracts must specify the FAA employees (or offices) to whom invoices are to be sent.
- (2) Invoices must be date stamped when received by FAA Accounting as specified under (b)(4) below, and this date will serve as the reference point for Prompt Payment standards (see Prompt Payment in this Section).
- (3) Varying locations in FAA may have specialized routing of invoices for supplies, services, or construction; however, in all cases, one original of the invoice must be delivered to accounting (AMK-310). The routing and acceptance of a proper invoice should generally follow these steps:

- (a) One original of the invoice will be delivered to accounting (AMK-310), while one original will be sent to both the CO and Contracting Officer's Representative (COR). Electronic submission of invoices will be allowed per Agency finance guidelines and prior agreement with the finance office;
- (b) Once received by accounting, the invoice will be date stamped unless received electronically and assigned to an Accounts Payable (A/P) technician;
- (c) The A/P technician will send an e-mail notification to the CO and COR requesting acceptance of the invoice and completion of the an invoice certification sheet or other payment documentation;
- (d) Based on documentation or a receiving report from the COR and the presence of a proper invoice, the COR or CO will perform acceptance in PRISM if necessary for a 3-Way match. If a 2-Way match, the COR or CO will ensure that the supplies and/or services on the invoice have been received. When a COR has not been designated, the CO may designate in writing a FAA Program Office employee to perform acceptance in PRISM. After invoice review and any acceptance, the CO will complete an invoice certification sheet or other payment documentation for the contract file and advise the A/P technician that the invoice is ready for payment. This CO approval of invoices may be delegated in writing to the receiver where firm-fixed-price commercial supplies or services are being purchased.
- (e) The A/P technician will then verify that all invoice requirements have been met and process the invoice for payment; and
- (f) Copies of all payment documentation will be retained in the contract file.

c. Real Property Invoicing

(1) Payment without Invoices

- (a) Payment for real property acquisitions shall be in arrears, without the submission of invoices or vouchers.
- (b) Payments are due on the first business day following the end of the payment period and this date may serve as the reference point for Prompt Payment standards (see Prompt Payment for Real Property in this Section).
- (c) The payments shall be directly deposited in accordance with the "Payment by Electronic Funds Transfer" clause in the Real Estate contract. Payments shall be considered paid on the day an electronic funds transfer is made.

(2) *Routing and Acceptance*

When COs create awards in PRISM, they will be required to select a Two (2) Way match for processing payment in Delphi. Detailed information on payment matching and acceptance requirements can be found on the PRISM website. 2-Way match requires the presence of an award without the need for manual acceptance in PRISM, and is authorized for the following types of procurements:

- (a) Awards for services placed on Recurring Payment; and.
- (b) Leases and Utilities placed on Lump Sum or Recurring Payment.

15 Electronic Payment Requests -Invoices (eInvoicing) Revised 1/2021

a. *Requirements.* Contracts will require the electronic submission of payment requests except for

- (1) Classified contracts or purchases where the electronic submission and processing of payment requests could compromise classified information or national security; or
- (2) For contracts with an approved waiver per AMS Guidance T3.3.1A.15.e for alternate payment procedures; or
- (3) For those paid for with a Government purchase card; or
- (4) Real Property contracts.

Contracts not requiring the electronic submission of payment requests must be administered consistent with the previous Guidance section “Invoices”. A waiver is not needed for contracts under a (1), (3), or (4).

- b. *FAA Electronic Invoicing System.* FAA uses the DOT Delphi eInvoicing web portal to facilitate the electronic submission and approval of contractor invoices except as provided in paragraph (a) of this section, contracting officers and finance officials will process electronic payment submissions through the Delphi web portal. If the requirement for electronic submission of payment requests is waived under paragraph (e) of this section, the contract or alternate payment authorization, as applicable, will specify the form and method of payment request submission.
- c. *Electronic Authentication.* Access to Delphi eInvoicing is granted with electronic authentication of credentials (name & valid email address) utilizing the GSA credentialing platform login.gov. Contractors submitting invoices must submit invoices via the Delphi eInvoicing web portal which is authenticated via login.gov.

- d. Contract clauses. Contracting officers must insert AMS clause 3.3.1-40 “Electronic Submission of Payment Requests” and provision 3.3.1-41 “Electronic Invoicing - Representation” in all applicable contracts per paragraphs (a) and (b).
- e. *Waivers*. If a contract requires alternate payment procedures other than eInvoicing, a waiver must be approved. If an offeror wishes to request a waiver from eInvoicing requirements per AMS provision 3.3.1-41, then the offeror must provide the documentation required by the provision. If the offeror then receives award, the waiver request will be expeditiously considered as follows:
 - (1) The Contracting Officer and AAQ Branch Manager must first approve the waiver and document the approval in the contract file;
 - (2) The waiver request will then be forwarded to FAA ESC Accounts Payable (9-AMC-FAA-iSupplier@faa.gov) who will then submit the waiver request to DOT. ESC Accounts Payable will notify the Contracting Officer whether the waiver is approved.

Waivers will only be granted under unusual circumstances; e.g., the contractor cannot utilize the Delphi eInvoicing web portal or the FAA is unable to receive electronic payment requests or provide acceptance electronically. The FAA decision on a waiver is final and not subject to the “Contract Disputes” clause AMS 3.9.1-1. If a waiver is granted, the contractor will utilize the current invoicing process per AMS Guidance T3.3.1A.14 and applicable contract clauses. The contract may still be converted to eInvoicing at a later date.

16 Debt Collection Revised 9/2021

- a. Contract debts arise in various ways. The following are some examples:
 - (1) Damages or excess costs related to defaults in performance.
 - (2) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.
 - (3) FAA expense of correcting defects.
 - (4) Overpayments related to errors in quantity or billing or deficiencies in quality.
- b. Once an indication of a contract debt surfaces, it should promptly be determined if a debt is due to FAA and in what amount. A demand for payment should be made as soon as the amount of the refund has been calculated. In general, interest will be due on any contract debt that is unpaid after 30 days. For debts under \$100,000, excluding interest, if further collection is not practicable, or would cost more than the amount of recovery, FAA may compromise the debt or terminate or

suspend further collection action.

c. Local legal counsel must review and approve any debt collection activity.

17 Assignment of Claims Revised 9/2021

a. Assignment of contract payments is the transfer by a contractor of its right to be paid by FAA for contract performance to a bank, trust company, or other financing institution. This assignment of contract payments serves as security for a loan to the contractor. An assignment of contract payments extinguishes the right of the transferor (assignor, contractor) to all future payments due under the contract, and establishes that right in the transferee (assignee, financial institution).

b. FAA may permit assignment of contract payments to help contractors obtain independent financing. When the contract provides for advance payments, assignments are not permitted.

c. No payments made by FAA to the assignee under any contract assigned may be recovered because of any liability of the contractor to FAA. This immunity of the assignee is effective whether the contractor's liability arises from, or independently of, the assigned contract.

d. A contractor may assign payments due or to become due under a contract if all the following conditions are met:

(1) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency;

(2) The assignment covers all unpaid amounts payable under the contract; and

(3) The contract terms do not expressly prohibit the assignment.

e. The CO processes requests for assignments from the contractor or financial institution. The contractor notifies the CO that an assignment is contemplated, and the assignment becomes effective upon written acknowledgment by the CO. An assignment should adhere to the following:

(1) Assignments for corporations must be:

(a) Executed by an authorized representative, validated by the secretary or the assistant secretary of the corporation, and impressed with the corporate seal;
or

(b) Accompanied by a true copy of the authorization from the corporation's board of directors for the signing representative to execute the assignment.

(2) Assignments for partnerships may be signed by one partner, if accompanied by adequate evidence that the signer is a general partner of the partnership and is

authorized to execute the assignment on behalf of the partnership.

(3) Assignments by an individual must be signed by that individual in the presence of and acknowledged before a notary public or other person authorized to administer oaths.

(4) The assignee must forward an original and three copies of the notice of assignment (see sample Notice of Assignment in AMS Procurement Samples for reference), together with one true copy of the instrument of assignment, to each of the following:

(a) CO;

(b) Surety on any bond applicable to the contract; and

(c) FAA accounting office designated to make payments.

(5) Before acknowledging the assignment, the CO should ensure that the contract permits assignment, the assignment covers only money due or to become due, and, unless waived, the assignee is registered separately in the Central Contractor Registration.

f. Upon notification of a desire for an assignment, the CO will:

(1) Notify the accounting office designated to make payments of the pending assignment; and

(2) Immediately notify the disbursing officer when assignment is accepted and ensure delivery of the instrument to the disbursing officer.

g. A release of assignment is required whenever the contractor wishes to reestablish its right to receive further payments and a balance remains due under the contract. If the assignee releases the contractor from an assignment of claims under the contract, the contractor must provide the CO, any Surety on any bond, and the FAA accounting office with the following:

(1) Written Notice of Release; and

(2) A true copy of the release instrument.

Each FAA addressee of a Notice of Release of Assignment should acknowledge receipt of the notice.

h. Assignments may be made to banks, trust company or financing institutions only.

18 Automatic Deobligation Revised 1/2021

a. *Inactive Obligations.* After 365 days of inactivity and a total line item obligation balance with an

absolute value of \$250 or less, or after 730 days of inactivity and a total line obligation balance with an absolute value of \$750 or less, a system-generated modification to deobligate this line item balance will be created and approved in PRISM. This deobligation modification will be created and approved through an automated process that will be run no less than once a year. The FAA payment office will adjust all financial records to reflect the fact that no undisbursed obligation balance remains on the line item. Any valid invoices received by FAA after this deobligation will be paid out of appropriate available funding. Upon notification from the Contracting Officer, the FAA's Office of Financial Services will promptly coordinate with the appropriate line of business/staff office to submit a procurement request with the necessary funding to pay the valid invoice in accordance with the Prompt Payment Act.

- b. *Cancelled Funds.* A system-generated modification to deobligate cancelled funds, of any dollar value, will be automatically created and approved in PRISM. Each system-generated modification will include a description in the modification text that the purpose of the modification is to deobligate cancelled funds and will cite AMS T3.3.1A.17 as the modification authority. The modification to deobligate cancelled funds can occur at any time and the FAA payment office will adjust all financial records to reflect the fact that no undisbursed obligation balance remains on the line item.

19 Incremental Funding for Fixed-Price Contracts Added 1/2021

- a. A fixed-price contract may be incrementally funded only if—
 - (1) The contract (excluding any options) or any exercised option—
 - (a) Is for severable services;
 - (b) Does not exceed one year in length; and
 - (c) Is incrementally funded using funds available as of the date the funds are obligated; or
 - (2) The contract uses funds available from two or more fiscal years and—
 - (a) Is a major systems acquisition; or
 - (b) Congress has otherwise authorized incremental funding
- b. An incrementally funded fixed-price contract will be fully funded as soon as funds are available.

B Clauses

[view contract clauses](#)

C Procurement Forms Revised 9/2021

	Document Name
	Contractor's Request for Progress Payment
	Electronic Funds Transfer Waiver Request

D Procurement Samples Revised 9/2021

	Document Name
	Sample Notice of Assignment

E Procurement Templates Added 9/2021

F Procurement Tools and Resources Added 9/2021

Section Revised: T3.10.1 – Contract Administration

Procurement Guidance - (~~4/2022~~4/2022)

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

1 Contract Management Revised 9/2021

2 Basic Responsibility for Contract Administration Revised 7/2012

3 Assignment of Contracting Officer's Representative Revised 9/2021

4 Communications with Vendors Revised 9/2020

5 Contract Modifications Revised ~~4/2022~~4/2022

6 Novations and Change-of-Name Agreements Revised 9/2021

7 Contract Files Revised 9/2021

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

1 Use of Government Excess Equipment Revised 9/2020

2 Suspension and Stop-Work Orders Revised 9/2021

3 Conversion of FAR Contracts to AMS Revised 9/2020

4 Contract Closeout Revised 9/2021

5 Final Indirect Cost Rates Revised 9/2021

6 Contract Audit Revised 9/2020

7 Bankruptcy Revised 9/2020

8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 9/2020

9 Contractor Performance Documentation and Maintenance Revised 4/2021

C Special Contract Administration Actions for Real Property Added 9/2020

1 Real Estate Asset Management Added 9/2020

2 Inspection and Acceptance Added 9/2020

D Clauses Revised 9/2020

E Procurement Forms Revised 9/2021

F Procurement Samples Revised 9/2021

G Procurement Templates Added 9/2021

H Procurement Tools and Resources Added 9/2021

I Appendices Revised 9/2021

1 Appendix - When Should a COR be Appointed Revised 9/2021

2 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 9/2021

3 Appendix - FAA CPARS Guide Revised ~~9/2021~~4/2022

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

1 Contract Management Revised 9/2021

- a. Contracts are managed to ensure FAA receives a specific product or service or real property in a timely manner. In certain circumstances, a modification to contractual requirements, with or without consideration from the contractor, may be in FAA's best interest. If such a situation arises, the Contracting Officer (CO) documents the circumstances. When the CO intends to substantially alter the obligations of the parties without consideration, the CO first obtains concurrence from legal counsel and the Chief of the Contracting Office (COCO) before execution, and must document the rationale.
- b. The Appendices to this guidance include memoranda, letters, and agreements used for contract administration actions described in this section. The stop work order, novation, and change of name agreement in the Appendices may be modified by the CO, subject to legal counsel's concurrence.
- c. Use of AMS contract file content checklists is mandatory; these checklists are in FAST under Procurement Checklists.

2 Basic Responsibility for Contract Administration Revised 7/2012

COs are responsible for administering contracts covered by AMS. This is accomplished through a team effort with the program office, and working through the Contracting Officer's Representative (COR) and other functional specialists supporting a program.

3 Assignment of Contracting Officer's Representative Revised 9/2021

- a. *Designating a Contracting Officer's Representative (COR).* The CO may designate an individual to act as his/her representative to facilitate contract administration. A COR resolves technical issues, gives technical direction to the contractor, and interprets technical processes and procedures for the CO. Other functions include interpreting technical requirements; assisting with the acquisition strategy; assisting with or developing the statement of work or requirements; preparing Government cost estimates; assisting in negotiation of costs or price of technical requirements; monitoring and evaluating contractor or vendor performance; reviewing and accepting services, supplies, and equipment; reconciling invoices and recommending payments. Requiring organizations should ensure the person recommended as COR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. The CO appoints a representative by execution of a COR Delegation Letter (see AMS Procurement Templates for

COR Delegation or Real Property Templates and Samples for COR Delegation For Real Property) describing specific delegated authority and responsibilities. The letter is provided by the CO to the COR at the time the assignment is made or changed in any way. The COR must sign the Delegation Letter to acknowledge completion of mandatory COR training or that it will be completed in the near future. (See the AMS COR Handbook, found on the FAST website under Procurement Tools and Resources, for additional information about COR duties).

- b. *Basic Training and Biennial Refresher Training Requirements.* See AMS Policy Section 5, Acquisition Career Program, for complete training requirements.

(1) The designated COR must meet the initial training requirement for certification by completing the designated hours of COR training. The required training is established as a three level certification program. Training and certification for Levels I and II will be completed prior to appointment. Level III certification must be completed no later than six months after appointment. Training may be completed online or in a classroom. Information regarding online and classroom training providers can be obtained from the Acquisition Career Management Office (AAP-300).

(2) The COR must provide documentation showing certification or a waiver to the CO.

- c. *Authority of the COR.* A duly-assigned COR is authorized to perform the actions delegated by the CO in a COR Delegation Form. When determining the support needed from a representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the representative in the letter. One COR Delegation Letter for all situations may not be appropriate because contractual situations are distinct and have varying needs. The letter may be modified to reflect the specific needs of the contract and CO. Depending on the scope, duration, complexity and aggregate total estimated potential value of the contract, a COR may not be required.

- d. *Changing the Contracting Officer's Representative.* To change the representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. Both actions are in writing and issued concurrently. The CO must forward copies of COR changes to the Acquisition Career Management Team (AAP-300), as they occur.

- e. *Notifying the Contractor.* The CO furnishes copies of the COR Delegation Letter and revocation memoranda to the contractor so that they are aware of the representative and his or her authority and responsibilities.

4 Communications with Vendors Revised 9/2020

Teamwork is an important element for successful contract performance. COs should establish good working relationships with vendors, and regular communication helps build this relationship. Post

award conferences, either in person or by telephone, are one means to establish communication and lay the foundation for teamwork at the start of contract performance. After performance has begun, recurring communication ensures everyone working under the contract understands the objectives and is focused on a common goal, and that any potential problems or schedule difficulties are identified and addressed before adversely impacting FAA or the contractor. Communication with the vendor and internal stakeholders (i.e. legal and/or service organization) is particularly essential when the following occur: at the beginning of contract performance; whenever either party detects a problem; and before and after significant milestones. However, communication between FAA and the contractor should occur routinely even when no problems may be encountered.

5 Contract Modifications Revised 1/20224/2022

a. Contract Modifications for Products, Services, and Construction

(1) *Authority.* Only a CO or person delegated specific authority to execute contract modifications for products, services (including real property related services), and construction contracts, may execute contract modifications.

(2) *Ceiling-Priced Modifications.*

(a) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

- 1) All requirements for performance or delivery;
- 2) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and
- 3) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling-priced modification or before completion of 40% of the work to be performed, whichever occurs first.

(b) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

(3) *Types of Contract Modifications.* Contract modifications fall into the following categories (see AMS Common Authorities for Modifications for Supplies, Services, or Construction in Procurement Tools and Resources for a detailed description of the types of modifications and associated authorities for modifying contracts):

(a) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement, within a reasonable period of time, in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

- 1) Make negotiated equitable adjustments when necessary;
- 2) Definitize ~~quick-response~~letter and ceiling-priced contracts;
- 3) Reflect other agreements of the parties which modify the terms of contracts; or
- 4) Make changes requested by the contractor.

(b) *Unilateral.* A unilateral modification is a contract modification made by the CO, without advance concurrence by the ~~contractor~~Contractor. Unilateral modifications are used, for example, to:

- 1) Make administrative changes;
- 2) Issue changes under the Changes clause; or
- 3) Make changes authorized by clauses other than a Changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause, etc.~~.); and~~
- 4) Issue termination notices

(4) *Extension of Contracts.*

(a) *Before Expiration.* The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(b) *After Expiration.* The CO must **not** extend a contract after it has expired.

b. Supplemental Agreements

(1) *Authority.* Only a CO or person delegated specific authority may execute supplemental agreements for real property contracts. Real property contracts include but are not limited to leases, easements, memorandum of agreements, permits, and licenses.

(2) *Supplemental Agreement Requirements.*

(a) All modifications to the existing requirements must be within the scope of the real property contract (e.g., the requirements the lessor has to perform on the lease).

(b) For leases, no supplemental agreement may extend the term beyond twenty (20) years unless approved by the Office of Chief Counsel, Field Operations, Acquisition and Real Estate. This restriction does not apply to no-cost leases.

(3) *Mandatory Use of Supplemental Agreements.* The CO **must** use a supplemental agreement for modifications to existing real property contract requirements to:

(a) Document changes in ownership;

(b) Exercise an option provided within a lease/easement, (e.g. renewal);

(c) Exercise a contractual authority under contract terms or clauses (e.g., early termination, reduction in space, etc.);

(d) Extend the term of a lease, easement, or other real property interest prior to expiration; and/or

(e) Change or modify any aspect of the real property contract.

(4) *Types of Supplemental Agreements.* Supplemental agreements fall into the following categories:

(a) *Unilateral.* A unilateral supplemental agreement is executed only by the CO, and consent of the vendor is not required. The following are examples where unilateral supplemental agreements are appropriate:

- 1) Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease;
- 2) Exercising a termination right in accordance with the cancellation clause in a contract for a real property interest;
- 3) To document a change in rent previously agreed to in the real property contract that requires an event in the future in order to determine the rent change, e.g. the

operating cost escalation clause or tax adjustment clause; or

- 4) To document a change in ownership where the CO has supporting documentation in the real estate file provided by the new owner.

(b) *Bilateral*. A bilateral supplemental agreement is one that must be signed by the CO and the vendor. Any changes to the contract not previously negotiated and agreed to in the contract require a bilateral supplemental agreement. The following are examples where bilateral supplemental agreements are required:

- 1) To identify or change the rent commencement date;
- 2) To modify square footage and associated rent based on actual measurement upon acceptance of the space for FAA occupancy;
- 3) Extending the lease term; and
- 4) Terminating a lease that does not contain termination rights.

(5) *Extension of Contracts*.

(a) *Before Expiration*. The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(b) *After Expiration*. The CO must **not** extend a contract after it has expired.

6 Novations and Change-of-Name Agreements Revised 9/2021

a. *Novation*.

- 1) Novation is a legal instrument executed by the contractor (transferor), the successor in interest (transferee) and the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Novations typically occur when the assets of the transferor are purchased by another company but may also be considered when a contractor is unable to perform and another viable contractor is willing to assume the original contractor's rights and duties under the contract.

- 2) When in its best interest, FAA may recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of:
 - (a) All of the contractor's assets; or
 - (b) The entire portion of the assets involved in performing the contract. Examples of such transactions include, but are not limited to:
 - (i) Sale of the contractor's assets with a provision for assuming liabilities;
 - (ii) Transfer of the contractor's assets incident to a merger or corporate consolidation; and
 - (iii) Incorporation of a proprietorship or partnership, or formation of a partnership.
- 3) A novation agreement may not be necessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government.
- 4) *Contractor (Transferor) Responsibilities.* Contractors requesting a novation of a contract to recognize a successor in interest must provide the information the CO needs to evaluate and process the novation request. This includes information that validates that novation of the contract is in the best interest of FAA and should include:
 - (a) Three copies of the proposed novation agreement (see "Paragraph (7) Content of Novation Agreement") signed by the original contractor and the successor in interest;
 - (b) One copy each, as applicable, of the following:
 - (i) The document describing the proposed transaction, purchase/sale agreement or memorandum of understanding;
 - (ii) A list of all affected contracts between the transferor and FAA, as of the date of sale or transfer of assets, showing for each, as of that date, the
 - a. Contract number and type;
 - b. Name and address of the contracting office;
 - c. Total dollar value, as amended; and
 - d. Approximate remaining unpaid balance;
 - (iii) Evidence of the transferee's capability to perform;
 - (c) Any other relevant information requested by the CO;
 - (d) One copy of each of the following documents, as applicable, as the documents become available except as provided in (5) below:
 - (i) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;

- (ii) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;
 - (iii) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;
 - (iv) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts;
 - (v) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;
Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;
 - (vi) Evidence that any security clearance requirements have been met;
 - (vii) The consent of sureties on all contracts listed under (4)(b)(ii) of this section if bonds are required, or a statement from the transferor that none are required.
- 5) The CO may modify this list of documents, provided that the CO receives information sufficient to protect the Government's interest.
- 6) *CO Responsibilities.* The CO has the primary responsibility to process the novation and determine, in consultation with legal counsel, if it is in the best interest of FAA.
- (a) *Novations Involving More Than One Contract.* When multiple contracts are involved, the CO administering the contract with the largest unpaid dollar balance should coordinate the novation agreement for all FAA contracts.
 - (b) *Coordination with Other Executive Agencies.* The FAA may elect to have its contracts included in the novation agreement (the "global agreement") being processed by the responsible contracting officer for all of the other executive agencies. If this election is made, the FAA CO should negotiate a separate advance agreement with the contractor that addresses any issues unique to the FAA, if appropriate. This agreement should be attached to and incorporated in the global novation agreement.
 - (c) *Evaluating the Novation Request.* The CO should consider all the information collected as a result of the proposed novation request with emphasis on the successor's ability to perform including:
 - (i) Contractor submissions under (5) above;
 - (ii) Information provided by other contracting offices;
 - (iii) Information indicative of the successor's responsibility such as debarment and suspension information;

(iv) National Institute of Health's Past Performance Database;

(v) Organizational conflict of interest;

Any other information that reflects the successor's ability to perform the contract.

(d) *Conflict of Interest (COI)*. If the CO determines that a COI exists and cannot be resolved, but the novation is in the best interest of FAA, the CO may initiate action to waive or mitigate the COI in accordance with AMS Procurement Guidance T.3.1.7.

(e) Coordinate the action with legal counsel to assure legal sufficiency.

(f) CO's Decision.

(i) *Rejecting the Novation Request*. If the CO determines that it is not in the best interest of the FAA to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(ii) *Executing the Novation*. If the CO approves the novation, he/she should:

- a. Prepare and sign a written contract modification for each affected contract;
- b. Incorporate a copy of the agreement into the contract modification;
- c. Place the original contract modification in the official contract file;
- d. Distribute the modification to the transferor; the transferee, affected FAA contracting offices, the paying office and any other distribution that is required for contract modifications.

7) *Content of the Novation Agreement*. A sample Novation Agreement is located in Procurement Samples provides a guide to preparing novation agreements. This may be adapted, subject to legal counsel's review, to fit specific cases, but should include the following provisions:

- (a) Successor contractor/transferee responsibilities;
- (b) The transferee assumes all the transferor's obligations under the contract;
- (c) The transferor waives all rights under the contract against the Government;
- (d) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and
- (e) A statement that nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

8) Any separate agreement between the transferor and the transferee regarding assumption of liabilities (e.g., an Advance Agreement covering the treatment of long-term incentive compensation plans, cost accounting standards noncompliance issues, environmental cleanup costs, final overhead costs) and any other issues should be incorporated in the novation

agreement.

b. *Change of Name Agreements.* A change of name agreement is appropriate when only the contractor's name changes and the rights and obligations of the parties are not affected.

1) *Contractor's Responsibilities.* The contractor should submit the following to the CO:

- (a) A written request to the CO to change the name;
- (b) The document effecting the name change, authenticated by a proper official of the State having jurisdiction;
- (c) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date;
- (d) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The CO may request the total dollar value as amended and the remaining unpaid balance for each contract.

2) *CO's Responsibilities.* The CO will then prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the vendor's request. The modification should state something similar to: "This modification changes the name of the Contractor from *[enter contractor's previous name]* to that shown above. This change is made at the request of the Contractor received on [insert date]."

3) A format for a Change of Name Agreement is located in Procurement Samples

7 Contract Files Revised 9/2021

a. *Contract Files for Products, Services, or Construction.*

- (1) The files containing records of all contractual actions should be maintained by the organization or person administering the contract. Documentation in the files should be a complete history of the transaction and:
 - (a) Provide a complete background as a basis for informed decisions at each stage in the acquisition process;
 - (b) Support actions taken;
 - (c) Provide information for reviews and investigations; and
 - (d) Furnish essential facts in the event of litigation or Congressional inquiries.

- (2) A contract file should consist of the following:
- (a) Contracting office documentation of the acquisition, basis for award, assignment of contract administration if applicable (including payment responsibilities), and any subsequent actions taken by the contracting office;
 - (b) Contract administration files that document actions reflecting the basis for and the performance of contract administration responsibilities;
 - (c) Government-furnished/contractor-acquired property file; and
 - (d) For contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing), paying office contract file, which documents actions prerequisite to, substantiating, and reflecting contract payments.
- (3) The contract files that contain proprietary or source selection information should be identified as such and protected from disclosure to unauthorized persons.
- (4) A guide describing creation and maintenance of contract administration files is in Appendix 2 to this Guidance.
- (5) File content checklists for contracts, purchase orders/FSS orders, blanket purchase agreements, and agreements are in the Procurement Checklists area of FAST. These checklists will assist in organizing the file and ensuring that required clearances and documents are properly filed. The CO must use and incorporate the following checklists in applicable files:
- (a) Blanket Purchase Agreement (BPA) File Checklist
 - (b) Construction File Checklist
 - (c) Contract File Checklist
 - (d) Delivery Order/Task Order/Blanket Purchase Agreement Call Checklist
 - (e) Grants Checklist
 - (f) Interagency Agreement Checklist
 - (g) Other Transaction Agreement Checklist
 - (h) Purchase Order/GSA/FSS Order File Checklist*

* Note: Checklist not required for orders with a total value of less than \$10,000.

b. Contract Files for Real Property.

- (1) Documentation to the Contract File

Sufficient documentation must be developed to explain and justify the real property acquisition action taken. COs must use the appropriate checklists to ensure the adequacy of contract clauses and to ensure required documentation is in the file. COs must use a 6 part folder for all real property acquisition files.

(2) Life Safety Compliance/Seismic

Life Safety Compliance and/or Seismic Certifications must be included in the contract file. The CO must ensure that the original signed certification(s) or applicable update is placed in any new or succeeding contract file and that a copy is kept in the previous contract file.

(3) Utility Documentation

- (a) The CO must use the utility checklist when assembling the utility file. The checklist must be filled in completely.
- (b) If a required item is listed in the checklist but is not applicable, the CO must place a N/A and a note in the file stating why it is not applicable.
- (c) The CO establishes and maintains hard copy records of the utility contract, purchase order or state utility contract.
- (d) The permanent file for each facility must remain active for the life of the facility and contain all supporting documents pertaining to the utility contract activity.
- (e) COs must use a 6-part folder system for all their utility acquisition files.

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

1 Use of Government Excess Equipment Revised 9/2020

The CO may authorize a cost reimbursement contractor to use excess FAA or DOT equipment, if a good business decision. The FAA Property Management organization makes arrangements for excess property upon written request by the contractor and approval by the CO. When FAA provides excess property to contractors, appropriate AMS property clauses must be part of the contract.

2 Suspension and Stop-Work Orders Revised 9/2021

a. General.

- (1) Suspensions of work or stop-work orders are tools available to the Government to interrupt

the contractor's work in appropriate situations. (See "Stop Work Order" in Procurement Templates on the FAST website). The CO should assure the appropriate clauses governing stop work and suspensions of work are in all contracts.

(2) The CO's suspension or stop work order should be in writing and include information required by the clauses, such as:

- (a) A description of the work to be suspended/stopped;
- (b) Instructions concerning the contractor's issuance of further orders for materials or services;
- (c) Guidance to the contractor on action to be taken on any affected subcontracts;
- and
- (d) Other suggestions for minimizing the contractor's costs.

(3) If either the suspension or stop work is used, the interruption of work should not be for an unreasonable length of time. Also, the CO should work with the program official, legal counsel, and others supporting the program, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the suspension or stop work order, or continue the suspension or stop-work order while the issues are being resolved.

b. Suspensions.

(1) Suspensions may be used in fixed-price construction or architect-engineer contracts in situations such as:

- (a) Delays caused by waiting for a decision from FAA;
- (b) Weather-related reasons;
- (c) Technological advancement;
- (d) Production or engineering breakthroughs;
- (e) Realignment of FAA programs or objectives;
- (f) Public safety concerns;
- (g) Emergency situations or other urgent conditions;
- (h) Differing site conditions; or

- (i) Violation of substantive contract terms, including FAA's smoking, harassment-free workplace, or other policies.

- (2) Generally, the decision to suspend work should be made jointly by the CO and program official. However, in cases of public safety concerns, emergency situations, or other urgent conditions, the CO may:

- (a) Suspend work pending discussion with the program official;

- (b) Notify the contractor orally and follow-up immediately with a written notice.

- c. *Stop work Orders*. Stop work orders may be considered in supply, service or research and development contracts when the work must be interrupted pending a decision by the Government.

3 Conversion of FAR Contracts to AMS Revised 9/2020

- a. Contracts awarded under the Federal Acquisition Regulations (FAR) system are not automatically converted to AMS contracts. The CO, jointly with the program official and legal counsel, should consider the merits of converting existing FAR contracts to AMS. Circumstances where conversion may benefit both FAA and contractors include contracts with:

- (1) A potential for litigation (to include clause 3.9.1-1 Contract Disputes);

- (2) A significant term or delivery schedule remaining;

- (3) Potential of new work being added to the existing contract; or

- (4) One or more options.

- b. The above list is not all-inclusive. COs may consider other situations if they believe the conversion would be advantageous. Contracts near completion, relatively inactive, or the result of extensive negotiation of clauses may not need to be converted. In all cases, converting a contract from FAR to AMS, whether in whole or in part, requires legal counsel's review before bilateral signature of the parties.

4 Contract Closeout Revised 9/2021

- a. *Background*. Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract. Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs

associated with administration and closeout processes. Timely closeout de-obligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion. AMS Guidance regarding both Records Retention and Electronic Contract Files also applies.

b. Definitions.

- (1) A contract is considered to be physically complete when:
 - (a) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
 - (b) The contractor has performed all services and the Government has accepted the services;
 - (c) All option provisions, if any, have expired; and
 - (d) The Government has given the contractor a notice of complete contract termination.
- (2) A purchase order, or delivery order against a Federal Supply Schedule contract, is considered physically complete when:
 - (a) Property or services have been received within the terms of the contract;
 - (b) Final payment has been made to the contractor; and
 - (c) The recipient acknowledges acceptance of the goods/services in Procurement System (applicable only when 3-way matching is used per AMS Invoice Guidance).

c. Time Frames. Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist and Completion Statement" (See Procurement Templates on the FAST Website). Closeout in Procurement System is required for all contracts, purchase orders, and delivery/task orders.

- (1) Files for contracts using commercial and simplified purchase procedures must be closed out upon final payment.
- (2) Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, must be closed out within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).
- (3) Contract files for contracts requiring settlement of indirect cost rates must be closed out within 36 months of the month in which the CO receives evidence of physical completion.

- (4) Contract files for all other contracts must be closed out within 20 months of the month in which the CO receives evidence of physical completion.
- (5) All delivery/task orders must be individually closed out within the time frame established for the basic contract as specified in subsections (2), (3), or (4) above. The time frame for the delivery/task order begins when the CO receives evidence of physical completion of the delivery/task order.

d. Preparation for Closeout. To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them in a timely manner and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist and Completion Statement." Following are examples of actions the CO may be able to take before the contract is physically complete:

- (1) Ensure the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the Office of Personnel Security's (AXP) list.
- (2) Ensure all information in Procurement System is current and correct.
- (3) Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).
- (4) If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.
- (5) If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. Closeout Procedures. When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify the documents and activities included in the "Contract Closeout Checklist and Completion Statement" have been received or are complete. After completion of the closeout checklist and notification of final payment from Accounts Payable, the CO must complete and sign the completion statement in the Contract Closeout Checklist and Completion Statement template located in Procurement Templates. For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the Contract Closeout Checklist and Completion Statement. To facilitate

receipt of required closeout documentation, the CO will need to take some or all of the following actions:

- (1) Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.
- (2) Send a memorandum to the program official to confirm contract completion.
- (3) Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems. The COR should return the signed memo to the CO within 30 days. For contractor employees transferring to a follow-on contract for the same services, the CO must notify AXP of all employee transfers in order to retain such contractor accounts.
- (4) For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.
- (5) Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).
- (6) Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:
 - (a) Final voucher.
 - (b) Confirmation of settlement of subcontracts.
 - (c) Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.
 - (d) Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).
 - (e) Patent and royalty reports.
 - (f) Contractor's release.
 - (g) Contractor's assignment of refunds, rebates, credits, and other amounts.
 - (h) List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to AXP.
- (7) Review and approval of the final voucher should include:
 - (a) Verification that all contractual requirements have been satisfied.
 - (b) Completion of any fee adjustments.
 - (c) Verification that contractual funding limitations have not been exceeded.
 - (d) Identification of any offsets applied.
 - (e) Verification of accuracy of Contractor Release and Assignment.
 - (f) Verification that all previous Contractor vouchers have been paid.

- (g) Approval for payment with signature and date.
- (h) De-obligation modification processed and distributed for any funds determined to be in excess.

(8) Completion and submittal of the Contractor Performance Assessment Reporting System (CPARS) evaluation for the contract.

(9) Closeout in Procurement System.

f. Quick-closeout Procedures. In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

- (a) The contract is physically complete;
- (b) The amount of unsettled indirect costs is not more than \$5,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and
- (c) Agreement can be reached on a reasonable estimate of allocable dollars.

(2) After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

- (a) Ensure adequate rationale for the decision is included in the file;
- (b) Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;
- (c) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:
 - (i) The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

- (ii) Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.
- (d) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information;
- (e) Establish final indirect cost rates using one of the following rates:
 - (i) The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;
 - (ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;
 - (iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;
 - (iv) The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;
 - (v) The previous year's final rates;
 - (vi) Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;
- (f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g. De-obligation of Funds Prior to Closeout.

- (1) *Actions Before De-obligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may de-obligate unused funding prior to the finalization of the contractor's final cost rates. Prior to de-obligating unused funding, the CO must:
 - (a) Confirm contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and
 - (b) Receive written authorization from the funding program office that the funds may be de-obligated (a purchase request requesting the de-obligation of funds satisfies this requirement).
- (2) *Reconciliation.* After establishing the contractor's final cost rates, FAA will reconcile the final funding requirement.
 - (a) If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program

office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.

- (b) If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. The FAA retains all other rights to collect funds due from the contractor.

h. Contract File Documentation. Official closeout documentation for contracts and interagency agreements, the signed and completed "Contract Closeout Checklist and Completion Statement" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

5 Final Indirect Cost Rates Revised 9/2021

- a. *Cognizant Federal Agency.* A contractor (or its operating divisions) may do business with more than one Federal agency. To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

- b. *Billing Rates.*

- (1) A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.
 - (2) The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.
 - (3) The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates

are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

- (4) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.
- (5) The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.
- (6) When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. Reimbursing Indirect Costs. Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. Final Indirect Cost Rates.

- (1) Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. Establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.
- (2) These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.
- (3) Billing rates and final indirect cost rates must be used in reimbursing indirect costs under

cost-reimbursement contracts and in determining progress payments under fixed- price contracts.

- (4) Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.
- (5) Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:
 - (a) Pending closeout of subcontracts awaiting Government audit.
 - (b) Pending contractor, subcontractor, or Government claims.
 - (c) Delays in the disposition of Government property.
 - (d) Delays in contract reconciliation.
 - (e) Any other pertinent factors.
- (6) If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.
- (7) The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

e. CO Determination Procedure.

- (1) The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:
 - (a) Business units of a multi-divisional corporation under the cognizance of a corporate administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
 - (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
 - (c) Educational institutions.
 - (d) State and local governments.
 - (e) Nonprofit organizations other than educational and state and local governments.
- (2) According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting

data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

- (3) The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.
- (4) The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.
- (5) The Government negotiating team must develop a negotiation position. The cognizant CO must:
 - (a) Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and
 - (b) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.
- (6) The cognizant CO:
 - (a) Conducts negotiations;
 - (b) Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and
 - (c) Prepares, signs, and places in the contractor general file:
 - (i) The disposition of significant matters in the advisory audit report;
 - (ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;
 - (iii) Reasons why any recommendations of the auditor or other Government advisors were not followed;
 - (iv) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement;

- (v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1; and
- (v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. Auditor Determination Procedure.

(1) The cognizant Government auditor establishes final indirect cost rates for:

- (a) Business units of a multi-divisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (b) Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
- (c) For business units not included, the CO (or cognizant Federal agency official) will determine whether the rates will be CO or auditor determined.
- (d) Educational institutions.
- (e) State and local governments.
- (f) Non-profit organizations other than educational and state and local governments

The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

- (a) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.
- (b) The administrative cost of CO determination would exceed the expected benefits.
- (c) The business unit does not have a history of disputes and there are few cost problems.
- (d) The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(2) Procedures.

- (a) The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.
- (b) Upon receipt of a proposal, the auditor:
 - (i) Audits the proposal and seeks agreement on indirect costs with the contractor;
 - (ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;

- (iii) If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and
- (iv) Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. Certification.

- (1) Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.
 - (a) Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:
 - (i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization; and
 - (ii) A state or local government, educational institution, or nonprofit organization subject to OMB Guidance “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (“OMB Uniform Guidance”);
 - (b) Failure to certify.
 - (i) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.
 - (ii) Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.
 - (c) False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor’s certificate of final indirect costs is thought to be false.
 - (d) Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

6 Contract Audit Revised 9/2020

a. Contract Audit - Post Award.

- (1) The auditor is responsible for:
 - (a) Submitting information and advice to the requesting activity, based on the auditor’s analysis of the contractor’s financial and accounting records or other

related data as to the acceptability of the contractor's incurred and estimated costs.

(b) Reviewing the financial and accounting aspects of the contractor's cost control system.

(c) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(2) *Audit Cognizance*. Normally, DCAA is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies should agree on the most efficient and economical approach to meet contract audit requirements.

(3) *Assigning Audit Services*. COs should coordinate with Headquarters Cost/Price Services (AAP-500) when requesting audit services directly from the responsible audit agency. DCAA's audit office locator is online at <http://www.dcaa.mil>. The audit request should include a suspense date and should identify any information needed by the CO. The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations must be in writing.

7 Bankruptcy Revised 9/2020

a. *General*. The CO must proactively monitor contracts to the extent practicable for indications of contractor financial difficulty, and respond appropriately to a written notification of bankruptcy. If the contractor provides the CO with a written notification of bankruptcy, the CO must protect FAA's rights and interests under contracts with the contractor.

b. *Contractor Financial Difficulties*. When the CO becomes aware of contractor financial difficulties, he or she must verify accuracy of the information, and follow the steps described below. Information relating to contractor financial difficulties should come from sources such as, but not limited to, the COR, QRO, Finance Office, Office of Inspector General, a financial institution, Dun and Bradstreet, or a newspaper article.

- (1) Determine whether the contractor is performing in a timely manner and making satisfactory progress.
- (2) Consider terminating the contractor for default if performance is untimely or otherwise unsatisfactory and the reason is within the contractor's control.
- (3) Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.
- (4) Notify the cognizant small and disadvantaged business utilization specialist if a small business contractor is involved.
- (5) Notify the bonding company, if appropriate.

c. *Notification of Bankruptcy*. Upon receipt of a contractor notification of bankruptcy, as required by

AMS clause 3.10.1-7, "Bankruptcy," the CO must:

- (1) Furnish the notification of bankruptcy to Headquarters Assistant Chief Counsel for Procurement Law and other appropriate offices, such as finance, property, and other FAA contracting offices.
- (2) Determine the amount of FAA's potential claim against the contractor. In assessing this impact, identify and review any contracts that have not been closed out, including those that are physically completed or terminated.
- (3) Take actions necessary to protect FAA's rights and interests, including Government property.
- (4) Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 9/2020

- a. *Scope.* The Federal Funding Accountability and Transparency Act, as amended, requires contractors to report subcontracted award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor(s).
- b. *Applicability.* This reporting requirement applies to all contracts with a value of \$25,000 or more. Reporting subcontract information is limited to the first-tier subcontractor(s). As described in AMS clause 3.13-14, there is an additional subcontract reporting exemption for contractors and subcontractors who had gross income in the previous tax year under \$300,000. Specific reporting requirements for executive compensation are also outlined in AMS clause 3.13-14.
- c. *Review.* The CO will ensure contractors comply with the reporting requirements of AMS clause 3.13-14. Contractor reports will be reviewed as necessary to ensure the information is consistent with contract information. In such reviews, the CO is not required to address data for which FAA would not normally have supporting information, such as compensation information required of contractors and first-tier subcontractors. However, the CO will inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation why it believes the information to be correct. The reports may be reviewed at <http://www.fsrs.gov>.
- d. *Failure to Comply.* If the contractor fails to comply with the reporting requirements, the CO will immediately bring this to the contractor's attention. If the contractor still does not comply, appropriate contractual remedies should be taken. In addition, the CO should make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance evaluation.
- e. When COs report contracting data to the Federal Procurement Data System (FPDS), certain data

will then pre-populate from FPDS to assist the contractor complete and submit the reports.

9 Contractor Performance Documentation and Maintenance Revised 4/2021

- a. This section provides policies and establishes responsibilities for recording and maintaining contractor performance information in the Contractor Performance Assessment Reporting System (CPARS). This section does not apply to determinations of fees under award or incentive fee contracts.
- b. Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor's record of meeting small business subcontracting objectives; the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.
- c. Past performance evaluations must be prepared as specified in the FAA CPARS Guide, Appendix 3. Generally, reporting is done on an annual basis and should be completed no later than sixty (60) days after the end of the applicable reporting period. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.
- d.
 - (1) Except as provided in this paragraph (d), FAA must prepare an evaluation of contractor performance for each contract or order that exceeds the following thresholds.
 - (i) Services exceeding \$5,000,000
 - (ii) Supply contracts exceeding \$10,000,000
 - (iii) Construction contracts exceeding \$10,000,000
 - (iv) Research & Development contracts exceeding \$5,000,000
 - (2) An evaluation of contractor performance is required for each order that exceeds the above specified thresholds placed against a Federal Supply Schedule contract, a task order contract or a delivery order contract, or any other ordering Agreement. Evaluations of multiple orders under an ordering contract or agreement may be combined in accordance with the guidance provided in the FAA CPARS Guide.
 - (3) Contracts or orders made pursuant to the Javits-Wagner-O'Day (JWOD) Act with firms under the AbilityOne program or with Federal Prison Industries, Inc. (FPI) do not require evaluations.
 - (4) An evaluation may be performed for any contract or order that does not meet the above thresholds.

- e. *Roles and Responsibilities.* Responsibility for completing CPARS evaluations rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order requirements and execution. The AO is responsible for entering the ratings and narratives for each evaluation performed.
- f. *Non-Disclosure.* The completed CPARS evaluation must not be made available to anyone other than Government personnel and the contractor whose performance is being evaluated.

Agency support contractors must not have access to CPARS evaluations of other contractors.

C Special Contract Administration Actions for Real Property Added 9/2020

1 Real Estate Asset Management Added 9/2020

All contract documents must be scanned at the point of origin (i.e., region-level, etc.) once the lease has been executed. The contract must be uploaded to the real property asset management system, and attached to the respective lease number.

2 Inspection and Acceptance of Space Added 9/2020

- a. *Inspection.* The CO, or designated representative, should inspect the real property sufficiently in advance of the occupancy date to ensure it is acceptable and ready for use. The vendor must provide a valid occupancy permit unless the local jurisdiction does not issue occupancy permits, in which case a certified copy of the FAA Safety and Environmental Checklist will suffice.
- b. *Acceptance.* Acceptance must be provided in writing. Any discrepancies or unfinished punch list items must be documented in the contract file.
- c. *Deficiencies.* All substantial, deficiencies that impact the FAA's use and/or occupancy of the real property must be corrected by the Vendor before acceptance of the real property, related service, or utility service. The CO is responsible for documenting the substantial deficiencies, and for communicating them to the Vendor.
- d. *Punch List/Inspection.* Once the substantial deficiencies are resolved, the CO must amend the contract to reflect the contract's actual commencement date. Minor deficiencies, "punch list items," should not prevent acceptance of space and commencement of rent. The items must be documented, and communicated to the Vendor. The CO, or designated representative, must conduct a follow-up inspection to ensure that the minor deficiencies are corrected. The results of the follow-up inspection will be documented in the contract file.

D Clauses Revised 9/2020

[view contract clauses](#)

E Procurement Forms Revised 9/2021

Document Name
Amendment of Solicitation/Modification of Contract (SF-30)

F Procurement Samples Revised 9/2021

Document Name
Novation Agreement
Change of Name Agreement

G Procurement Templates Added 9/2021

Document Name
COR Delegation Letter
Stop Work Order

H Procurement Tools and Resources Added 9/2021

Document Name
AMS Common Authorities for Modifications for Supplies, Services, or Construction

I Appendices Revised 9/2021

1 Appendix - When Should a COR be Appointed Revised 9/2021

When Should a COR be Appointed?

Usually Necessary:

- ☐ Contracts for supplies, services or construction with technical complexity, such as:
 - o Major systems
 - o Highly technical services such as engineering, programming, architecture and engineering (A&E) etc.
 - o Evolving technologies (e.g. NEXTGEN)
 - o Large scale construction (e.g. ATCT, ARTCC)
- ☐ Contracts with a long performance time, such as:

- o Janitorial
- ☐ Items, services or construction requiring extensive oversight and inspection, such as:
 - o Guard services
- ☐ Contracts with a contract type other than firm-fixed-price (e.g. cost-type, T&M/LH)
- ☐ Service or construction contracts with numerous task orders (e.g. TSSC, NISC, eFAST)
- ☐ High-visibility contracts
- ☐ Contracts with numerous contractor personnel, especially when performing at an FAA site
- ☐ Contracts requiring delivery/monitoring of extensive Government furnished property
- ☐ Contracts for real property requiring extensive oversight and inspection

Usually Not Necessary:

- ☐ Contracts delivering commercial fixed-price items or services, such as:
 - o Spare parts
 - o Office equipment and maintenance
 - o Tree trimming/small landscaping projects
 - o Other items of a low complexity
- ☐ Commercial services with a short performance time, such as:
 - o Copier repair
 - o Elevator repair
 - o Small scale moving services
- ☐ Purchase orders with simple terms and conditions that require minimal oversight and inspection
- ☐ Short-term contracts to address requirements for a bona-fide emergency
- ☐ Renting Portable Storage Units or Procuring Short-term Storage Services

2 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 9/2021

The following guidance is intended to assist contracting personnel maintain contract files and perform contract administration. When contracting personnel invest time at contract award to create files and tracking tools, and maintain those files as changes occur, it ultimately helps reduce time required for contract administration and closeout. Organized and maintained files allow contracting personnel to quickly and easily locate documents and information when needed, making contract administration more efficient and less burdensome. The procedures outlined below provide enough detail for effective administration of large contracts. For administration of smaller contracts, contracting personnel can choose those sections that apply.

1. Establishing Contract Administration Files (or Basic Contract Files).

Contract File folders should be used for all files related to the contract. Labels on folders should be typed so they can be easily read and should include the contract number and title of contents (e.g., Basic Contract Folder, Modification Folder, Voucher/Invoice Folder). The Basic Contract File should include the documents listed in the subparagraphs below. Documents should be placed in the folder(s)

in the order listed in the "Contract Organization and File Content List" (see Procurement Forms in FAST) and separated by marked tabs or in separate folders. The "Contract Organization and File Content List" should be annotated with the contractor's mailing address and fax number, contractor's point of contact and telephone numbers, Contracting Officer's Representative (COR) name and telephone number, and Quality Reliability Officer (QRO) name and telephone number.

a. Basic Contract Documents. A copy of the table of contents should be included in each folder of the Basic Contract File. (Some contracts are large enough to require more than one folder.)

1. Original Signed Contract - Sections A thru J.
2. Distribution Sheet (the Distribution Sheet should be annotated with the date each copy of the contract was distributed.
3. Requisition or procurement request (PR) and appropriate automated procurement system award form.
4. Copies of COR Delegation Letter, QRO, Property Administrator, and Contract Administrator Designation memoranda.
5. Any other applicable documents listed in the Contract Organization and File Content List.

b. Contract Data Requirements List (CDRL) Folder. Copies of documents delivered under CDRLs should be filed in the order received, with each version separated by tabs.

c. Voucher/Invoice Folder(for contracts not subject to AMS T3.3.1A.15 *Electronic Payment Requests (eInvoicing)*). Each voucher/invoice should be filed with its signed voucher/invoice approval certification and record of payment. Vouchers/invoices should be filed chronologically. A financial spreadsheet should be filed on the left side of each Voucher/Invoice Folder. Guidance on creating financial spreadsheets can be found in paragraph (2)(a), below.

d. Working Copy of the Contract. A working copy of the contract should be maintained electronically and in hard copy in a binder. Both copies should be updated to reflect the most current version of the contract each time a modification is issued. To facilitate this process, all modifications should be issued with contract change pages. Changes in the contract change pages should be highlighted (e.g., bold, shaded, or italicized font).

e. Other Contract Folders. Folders should be created for the following contract documentation, as applicable:

1. Incoming Correspondence;
2. Outgoing Correspondence;
3. Subcontracts;
4. Government Furnished Property/Information;
5. Memoranda to the File;
6. Program Management Reviews/Progress /Status Reports;
7. Quality Reliability Officer (QRO) Reports;
8. Contractor and Industrial Security; and

9. Modifications.

2. Processing Vouchers/Invoices(for contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing))

a. *Financial Spreadsheet.* A financial spreadsheet should be developed to track total contract obligations and invoice payments. This provides the current balance of contract funds. For contracts containing many Contract Line Item Numbers (CLINs), it may be helpful to develop a spreadsheet for each CLIN. For contracts containing task orders, it may be helpful to develop a spreadsheet for each task order. If spreadsheets are created for each CLIN or task order, a summary financial spreadsheet should be created to provide the current balance of funds for the entire contract.

b. *Processing Vouchers/Invoices.*

1. Review each voucher/invoice for errors;
2. Record costs and fees separately in spreadsheets;
3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in Procurement System, noting date sent to COR/designee;
4. Set up a "Voucher Suspense Desk File" with a copy of the approval certification; note date due to Accounts Payable. Set a suspense date a few days earlier to trigger COR/designee acceptance and release;
5. Upon confirmation of acceptance in Procurement System by COR/designee, authorize payment of invoice;
6. Make a copy of approval certification and invoice;
7. Place in voucher/invoice folder;
8. Any disallowances must be noted with a memo to the file explaining the deduction and/or rejection and steps taken to notify the contractor. A letter should be written to the contractor explaining the deduction and/or rejection and a copy included with the invoice;
9. Confirm payment was made; and
10. Conduct periodic reviews of payments with Accounts Payable.

3. Correspondence

a. *Processing Incoming Correspondence.*

1. Create an incoming correspondence log sheet. As correspondence is received, it should be annotated in the log and filed in the incoming correspondence folder. Completed log sheets should be filed on the right side of each folder on top of incoming correspondence. Completed log sheets can be filed in hand-written form; however, if the information is typed in an electronic document, the log can be searched electronically.
2. Incoming correspondence by serial number, CDRL number or reference, subject, and date.
3. Review the correspondence and take action as required. If the correspondence requires COR review and/or action, be sure to give the COR a suspense date and file a copy of the e-mail or memo and correspondence in a "COR Suspense Desk File."
4. If the appropriate action includes providing a response to the contractor, prepare a written response using the outgoing correspondence procedures described in paragraph (3)(b), below.

b. Processing Outgoing Correspondence.

1. Create an outgoing correspondence log sheet. Completed log sheets should be filed on the right side of each folder. Completed log sheets can be filed in hand-written form; however, if the information is typed in a Microsoft Word document, the log can be searched electronically.
2. Log all outgoing correspondence using the next available serial number, entering CDRL number or reference, subject, and date. (Note: to make outgoing correspondence easier to track, it can be helpful to include in the correspondence serial number the calendar or fiscal year and program acronym.)
3. When preparing outgoing correspondence, it is helpful to create an electronic outgoing correspondence directory to create and store electronic copies of correspondence. The serial number from the outgoing correspondence log should be typed in the top right corner of the outgoing letter. The subject line of the letter should be included in the log for quick reference.
4. The file copy of letters to the contractor should be filed in the outgoing correspondence folder with relevant documents.

4. Processing Modifications to the Basic Contract

a. Preparing the Modification.

Each modification should include an Amendment of Solicitation/Modification of Contract (SF-30) or appropriate automated procurement system modification form to meet the requirements of the specific modification. If an SF-30 is used to award the modification, the file must also contain the automated procurement system modification form.

1. A modification summary, each page of which should be annotated with the contract, requisition, modification, and page numbers. The modification summary should include:
2. A preamble summarizing all changes included in the modification.
3. A section by section, detailed description of the changed or modified parts of the contract. This description should include from/to statements to explain the change.
4. If funds are involved, Section G is always modified to show the new CLIN and appropriation data and amount as well as the affect the modification has on total contract value. This amount should match the amount on the SF-30 and automated procurement system modification form.
5. Contract change pages (with changes highlighted) for the working copy of the contract. The modification number should be printed in the top left corner of each modified page.

b. Distributing the Modification. Prepare a Distribution Sheet to document proper distribution of the modification. Annotate the Distribution Sheet with the date distribution was made.

c. Filing the Modification. The modification file should include the documents listed in the subparagraphs below. If the modification is large enough to be filed in its own folder, it is helpful to include a table of contents listing the modification and all other supporting documents included in the folder. Copies of the modified/changed contract pages should be filed in the working copy of the

contract. The electronic version of the working contract should be updated to include the changed pages.

1. Signed SF-30 and automated procurement system modification form, the modification, and any associated documents (e.g., memoranda to the file, Determinations and Findings, contractor proposals, negotiation memoranda)
2. Requisition or PR.
3. Distribution Sheet.
4. Any other applicable documents.

d. Other Actions Related to Modifications:

1. Update or create appropriate financial spreadsheets (described in paragraph 2.a); and
2. Create a Modification Summary Table. This document provides a quick reference documenting by modification number the description, type (bilateral or unilateral), dollar amount, and date of each modification. The electronic version of the table can be searched, allowing quick retrieval of modification information.

5. Preparing Memoranda to the File.

Typed or hand-written notes should be prepared to document telephone calls and meetings, and filed in a single folder as memoranda to the file. These notes should include a list of participants, the topic, the date, and action items assigned for each telephone call and meeting.

6. Maintaining the Subcontract File.

If applicable, ensure that the contract has an approved Subcontracting Plan that has been incorporated into the contract by reference and has been made an attachment to the basic contract. File copies of all subcontracting documentation in the Subcontract File. Ensure that the contractor submits the required subcontracting information to the Electronic Subcontracting Reporting System (eSRS) electronically in accordance with AMS clause 3.6.1-4 "Small, Small Disadvantaged, Women-Owned, Service-Disabled Veteran Owned Small Business, and HUBZone Small Business Subcontracting Plan.

7. Processing CDRLs

a. Submission and Review of CDRLs. The contractor should submit CDRLs in hard copy or electronically in accordance with the contract (Block 15 of CDRL). Procedures should be established to ensure that all CDRLs are reviewed by the CO and responsible program/technical representatives and that comments are provided to the CO in a timely manner. Most CDRLs have a time limit for Government review and response. The document transmitting comments to the CO should be filed so it can be used to support COR/technical review.

b. Processing Comments and Changes to and Approving CDRLs. CDRL discrepancy forms should be developed to transmit comments to the contractor. Comments regarding CDRLs and approval of

CDRLs should be transmitted to the contractor under a transmittal letter prepared by the CO. The transmittal letter should include re-submittal requirements if applicable. The transmittal letter should be filed in the outgoing correspondence folder. Changes to CDRLs, including extensions to submission or review dates, should include adequate consideration. These revisions must be documented in a contract modification establishing the new terms.

c. Tracking CDRLs. The CO should create a tracking system to manage submission of all CDRLs.

3 Appendix - FAA CPARS Guide Revised 9/2021/4/2022

FAA Use of Contractor Performance Assessment Reporting System (CPARS)

1.0 Introduction

This Guide assigns responsibilities and provides procedures for systematically assessing contractor performance in accordance with AMS Procurement Guidance T3.10.1B.9.

1.1 Background

The Contractor Performance Assessment Reporting System (CPARS) is a paperless contracting initiative housed and maintained by the DoD. CPARS has been mandated for use across all Federal Government agencies. Use of the CPARS ensures that the FAA's contract performance evaluations will be entered into the CPARS database to enhance the centralized data repository of contractor performance information. All CPARS evaluations must be initiated and completed electronically within the system. Information on CPARS is available on the CPARS website at www.cpars.gov.

1.2 Purpose

The primary purpose of the CPARS is to ensure current and accurate data on contractor past performance is available for use in source selections. The completed past performance assessments are available through CPARS. In addition to the sources of information outlined in AMS Procurement Guidance T3.2.2.3B.2, the Contracting Officer may use information available through CPARS to support responsibility determinations of prospective contractors. Senior FAA and contractor officials may also use the information derived from the CPARS for other management purposes consistent with AMS Guidance.

CPARS assesses a contractor's performance, both positively and negatively as appropriate, providing a record on a given contract during a specified period of time. Each assessment must be based on objective data (or measurable, subjective data when objective data is not available) supportable by program and contract management data (see Section 1.4). CPARS performance expectations should be addressed in the Government and contractor's initial post-award meeting.

1.3 Responsibility for Completing CPARS Assessments

Responsibility for completing quality CPARS assessments in a timely manner rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order execution. The AO shall be responsible for entering the ratings and narratives for each evaluation performed.

The CPARS process is designed with checks-and-balances to facilitate the objective and consistent evaluation of contractor's performance. Both the Government's and contractor's perspectives are captured in the CPARS evaluation.

1.4 CPAR Evaluation Methodology

The value of the CPARS to a future source selection team is dependent on the level of effort the AO takes in preparing a quality and timely narrative to accompany the CPAR's ratings. It is paramount the AO submits a rating consistent with the definitions of each rating and thoroughly describes the circumstances supporting the rating. The definitions of each rating, together with related guidance for preparing the narrative, are provided in Attachment 1.

Each evaluation must be based on objective data (or subjective data when objective data is not available) supported by program and contract management records. The following sources of data are recommended:

- ☐ Contractor operations reviews
- ☐ Status and progress reviews
- ☐ Production and management reviews
- ☐ Management and engineering process reviews (e.g. risk management, requirements management, etc.)
- ☐ Cost performance reports and other cost and schedule metrics
- ☐ Other program measures and metrics such as:
 - o Measures of progress and status of critical resources
 - o Measures of product size and stability
 - o Measures of product quality and process performance
 - o Customer feedback/comments and satisfaction ratings
- ☐ Systems engineering and other technical progress reviews
- ☐ Technical interchange meetings
- ☐ Physical and functional configuration audits
- ☐ Quality reviews and quality assurance evaluations
- ☐ Subcontracting reports
- ☐ Earned contract incentives and award fee determinations

Subjective assessments concerning the cause or ramifications of the contractor's performance may be provided; however, speculation or conjecture is prohibited.

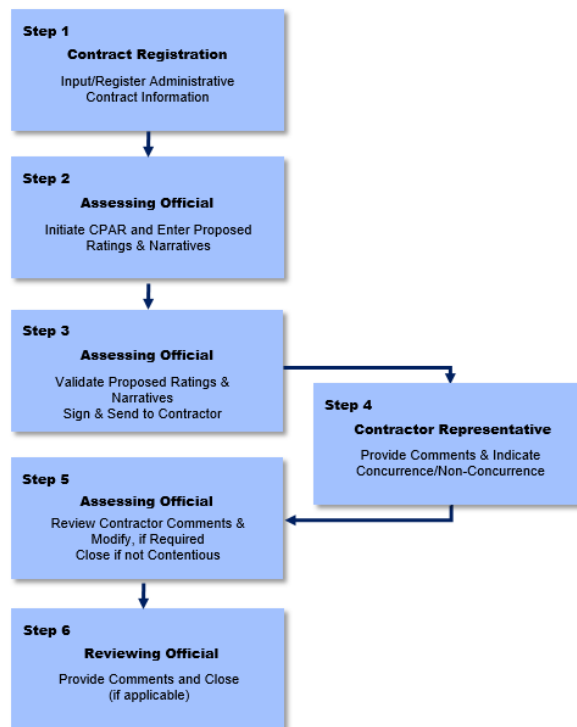
1.5 Uses of Summary CPAR Data

Summary data from the CPARS database or from the reports themselves may be used to measure the status of industry performance and support continuous process improvement. Further analysis of data from the CPARS database may be accomplished by the CPARS Focal Point for internal Government use but is not authorized for release outside the Government.

1.6 Change-of-Name/Novation

In the event of a contract novation or the change of the contractor's name, see AMS Procurement Guidance T3.10.1A.8 for guidance in these circumstances since the ~~Dun & Bradstreet Universal Numbering System (DUNS)~~ Unique Entity Identifier (UEI), Commercial and Government Entity (CAGE) codes and contractor names may be affected in the CPARS. The AO of each contract affected by any such changes is ultimately responsible for ensuring that the contract information in the CPARS is current and correct.

1.7 Basic Workflow Diagram



2.0 Thresholds for Mandatory Evaluations

All contracts or orders which exceed the following thresholds must include the applicable contract clause addressing CPARS evaluations and have an evaluation completed in CPARS:

- ☐ Services contracts exceeding \$5,000,000;
- ☐ Supply contracts exceeding \$10,000,000;
- ☐ Construction contracts exceeding \$10,000,000

- ☐ Research and development contracts exceeding \$5,000,000

In addition to contracts that must have CPARS evaluations performed, FAA may choose to perform CPARS evaluations for contracts that do not meet the above thresholds.

2.1 CPARS for Indefinite-Delivery Contracts, Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs)

For indefinite-delivery contracts and BPAs, but excluding Basic Ordering Agreements, (BOAs) the dollar value of individual orders is combined to determine if the threshold to require completing CPARS evaluation(s) has been met.

The cognizant program office for the contract or agreement shall determine how CPARS evaluations' will be completed:

- ☐ One CPARS evaluation for each order,
- ☐ By combining all orders into one CPARS evaluation), or
- ☐ Combining similar orders together. For example, orders for one type of service are combined into one evaluation and orders for a different type of service are combined into separate evaluations.

Combining orders into one CPARS evaluation may not be feasible, when contracts are used by multiple activities within the agency, or when individual orders are significantly different. The cognizant program office should avoid combining into one CPARS evaluation multiple orders that are for different products or services or those that are different contract types.

When orders are combined, the narrative describing the contractor's performance on each order, both positive and negative, must be included so that the breadth and quality of information is available for source selection official use.

If a consolidated CPARS evaluation for orders is completed, the period of performance for the assessment is based on the effective date/award date of the basic contract and each subsequent, exercised option year period. Where possible, each order number and title may be included in Block 17. Narrative must be provided on the contractor's performance on each order (in Block 20) so that the breadth and quality of information on the order is available for source selection official use.

If separate CPARS for any single orders are completed, the period of performance for the assessments is based on the effective date/award date of each individual order.

For BOA orders, a CPARS evaluation must only be completed on each order meeting the threshold.

2.2 CPARS for Orders Under Federal Supply Schedules

For CPARS evaluations on Federal Supply Schedule Orders, the period of performance for the

assessment must be based on the effective date/award date of the individual order.

2.3 Joint Ventures

When the joint venture on a contract using CPARS has a unique CAGE code and ~~DUNS number~~UEI, a single CPAR will be prepared for the joint venture using those CAGE and ~~DUNS codes, code and~~ UEI. If the joint venture does not have a unique CAGE code and ~~DUNS code~~UEI, separate CPARS containing identical narratives will be prepared for each participating contractor and will reference that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

2.4 Letter or Ceiling Priced Contracts

Assessment information regarding performance under letter or ceiling priced contracts using CPARS must be included in the annual evaluation. If the final negotiated contract type is not a cost-type contract, cost information for the period such an action was in effect (if applicable) must be included under the Cost rating element in the CPARS. If the final negotiated contract type is a cost-type, cost information for the entire period of performance must be included under the Cost rating element. The supporting narrative must fully explain the contractor's performance during the action, including throughout definitization. The contractor's performance under the undefinitized period must be separately identified but considered in the overall CPARS.

2.5 Subcontractor Assessments

Assessments shall not be completed on subcontractor performance. However, an assessment shall address the prime contractor's ability to manage and coordinate subcontractor efforts, if applicable, as well as compliance with requirements of the Small Business Subcontracting Program.

3.0 FAA Responsibilities

The FAA will:

- ☐ Establish procedures to implement CPARS. These procedures shall include training requirements for Focal Points, AOs, ROs, and Contractor Representatives to ensure procedures for monitoring the timely completion of reports, report integrity (e.g., quality of reports) and overall CPARS system administration are in place.
- ☐ Establish CPARS Focal Point(s)
- ☐ Register new contracts using CPARS in the system within 30 calendar days after contract award with the information for blocks 1-14 of the CPARS form. Registering the contract will establish the record and facilitate subsequent CPARS reporting.

3.1 CPARS Roles and Responsibilities

3.1.1 Agency Point of Contact (DOT Office of the Senior Procurement Executive (M-60))

The Agency Point of Contact is DOT, which responsible for administrative oversight of the

CPARS process. Duties include:

- ☐ Obtaining Command Point of Contact access to CPARS
- ☐ Assigning of Senior Command Official(s)
- ☐ Serving on CPARS Operational Requirements Committee
- ☐ Monitoring to ensure effective implementation of the CPARS process

3.1.2 Senior Command Official (FAA Acquisition Policy Group (AAP-100))

- ☐ Obtaining Senior Command Official access to CPARS by contacting the Agency Point of Contact
- ☐ Coordination and submittal of subordinate organization CPARS Focal Points to the CPARS Program Office
- ☐ Assistance to subordinate organization CPARS Focal Points (e.g., training, monitoring, and policy)
- ☐ Evaluating quality and compliance metrics of subordinate organizations
- ☐ Providing metrics for management, as requested
- ☐ Reviewing and providing subordinate organization issues to the CPARS Focal Point and/or the CPARS Program Office

3.1.3 Focal Point (FAA Acquisition Reporting Branch (AAP-430))

- ☐ Registering contracts using CPARS in the system within 30 calendar days of contract award
- ☐ Assigning access authorization for FAA and contractor personnel (complete contract authorization based on information from the Contracting Officer, COR/Project Officer, and contractor personnel authorized to appoint a designated representative)
- ☐ CPARS account management and maintenance
- ☐ Control and monitoring of CPARS, including the status of overdue evaluations
- ☐ Establishing processes to monitor quality reports in a timely manner
- ☐ Troubleshoot user errors-if cannot be mitigated, contact the CPARS Help Desk

3.1.4 Assessing Official (AO) (FAA COR, Program/Project Manager, or Program Office Representative)

- ☐ Responsible for completing the CPARS
- ☐ Reviewing comments from the designated contractor representative once the evaluation has been returned by the contractor or after 30 days have lapsed
- ☐ After receiving and reviewing the contractor's comments on the CPAR, the AO may revise the assessment, including the narrative. The AO will notify the contractor of any revisions made to a report as a result of the contractor's comments. Such a revised report will not be sent to the contractor for further comment. The contractor will have access to both the original and final reports in CPARS when the FAA finalizes the evaluation.

3.1.5 Contractor Representative

The contractor on a given contract must designate at least one (1) representative to whom the evaluations shall be sent automatically and electronically. The name, title, e-mail address and phone number of the designated contractor representative(s) must be provided to the Contracting Officer who will, in turn, provide that information to the CPARS Focal Point for authorization access. Any changes in designated contractor personnel will be the sole responsibility of the contractor to inform the Contracting Officer or Contract Specialist who shall in turn forward the information to the CPARS Focal Point. A designated contractor representative has the authority to:

- ☐ Receive the Government evaluation from the AO
- ☐ Review, comment and return the evaluation within 60 calendar days. If the contractor desires a meeting or teleconference with the AO to discuss the CPAR, it must be requested, in writing, no later than seven calendar days from the receipt of the CPAR. The meeting or teleconference shall be held during the contractor's 60-day review period.

3.1.6 Reviewing Official (RO) (FAA Contracting Officer)

The Reviewing Official is the final arbiter when there is disagreement between the government and the contractor. The RO must review and sign the assessment when the contractor indicates non-concurrence with the CPARS or when the contractor is non-responsive. The RO has the authority to:

- ☐ Provide narrative comment (the Reviewing Official's comments supplement those provided by the AO. They do not replace the ratings provided by the AO).
- ☐ Sign the CPARS (at this point it is considered final and is posted in the CPARS and is available for Source Selection Official use)
- ☐ Ensuring a copy of the completed evaluation is placed in the contract file

4.0 Frequency of Reporting

Generally, reporting is done on an annual basis. When an out-of-cycle CPARS is required, however, it is acceptable to complete two CPARS in a given year for the contract. Out-of-cycle CPARS do not alter the annual reporting requirement. For example, if the regular CPARS period of performance ends on 30 September 2022 and an out-of-cycle CPARS is completed which covers a performance period that ends on 1 May 2022, the next intermediate CPARS report is still required to cover the period of performance from 1 October 2021 to 30 September 2022. A period of performance overlap is only permitted when an out-of-cycle CPARS report has been prepared.

4.1 Initial Reports

An initial CPARS is required for new contracts using CPARS that have a period of performance greater than 365 calendar days. The initial CPARS must reflect evaluation of at least the first 180 calendar days of performance under the contract, and may include up to the first 365 calendar days of performance. For contracts with a period of performance of less than 365 calendar days, see "Final Reports" below.

4.2 Intermediate Reports

Intermediate CPARS are required every 12 months throughout the entire period of performance of the contract after the initial report and up to the final report. An intermediate CPARS is also required:

- ☐ Upon a significant change in the quality of contractor performance, or
- ☐ Upon a significant change within the agency, provided that a minimum of six months of performance has occurred, such a change in program management responsibility:

An intermediate CPARS must be done prior to any transfer of Assessing Official duties from one individual to another to ensure continuity.

An intermediate CPARS is limited to contractor performance occurring after the preceding normal cycle CPARS. To improve efficiency in preparing the CPARS, the CPARS may be completed together with other reviews (e.g., award fee determinations, major program events, program milestones and quality assurance surveillance records).

4.3 Final Report

A final CPARS must be completed upon contract completion or delivery of the final major end item on contract. Final Reports are to be prepared on all contracts using CPARS with a period of performance of less than 365 calendar days. The final CPARS does not include cumulative information but is limited to the period of contractor performance occurring after the preceding CPARS. The CPARS Focal Point has the authority to approve extensions when special circumstances arise.

4.4 Out-of-Cycle Reports

An Out-of-Cycle CPARS may be appropriate when there is a significant change in performance that alters the assessment in one or more evaluation area(s). The contractor may request a new assessment or the AO may unilaterally prepare a new evaluation and process a new CPARS through the automated CPARS system. The determination as to whether or not to update an evaluation will be made solely by the AO. The evaluation will follow the same workflow as the annual evaluations and will be posted electronically in CPARS after review/coordination through the FAA and contractor.

4.5 Addendum Reports

Addendum reports may be prepared, after the final past performance evaluation, to record the contractor's performance relative to contract closeout, warranty performance and other administrative requirements.

5.0 Records Retention and Disposition

All records created under this document must be retained and disposed of in accordance with agency procedures and any applicable program security requirements.

5.1 CPARS Markings and Protection

Anyone granted access to CPARS is responsible for ensuring that all CPARS are appropriately marked and handled. All CPARS forms, attachments, and working papers must be marked “FOR OFFICIAL USE ONLY/SOURCE SELECTION INFORMATION”. Caution must be exercised in transmitting any CPARS as an attachment to an email message.

CPARS may also contain information that is proprietary to the contractor. Information contained on the CPARS, such as trade secrets, protected commercial information, or financial data obtained from the contractor in confidence, must be protected from unauthorized disclosure. AOs and ROs must annotate on the CPARS if it contains material that is a trade secret, etc., to ensure that future readers of the evaluations are informed and will protect as required. The following guidance applies to protection both internal and external to the FAA.

5.1.1 Internal FAA Protection

CPARS must be treated as source selection information at all times. Information contained in the CPARS must be protected in the same manner as information contained in source selection files.

5.1.2 External Government Protection

Due to the sensitive nature of CPARS, disclosure of CPARS data to contractors other than the contractor that is the subject of the report, or other entities outside the FAA, is not authorized. Disclosure of CPARS data to advisory and assistance support contractors other than the contractor that is the subject of the report is strictly prohibited. A contractor will be granted access to its CPARS maintained in CPARS by the appropriate Focal Point.

5.2 Freedom of Information Act (FOIA)

Contractor performance information is privileged source selection information. It is also protected by the Privacy Act and is not releasable under the Freedom of Information Act. Performance assessments may be withheld from public disclosure under Exemption 5 of the Freedom of Information Act. The FOIA office must coordinate the request with the CPARS PMO and local FAA Focal Point.

5.3 Use of CPARS in Source Selection

CPARS provides an assessment of ongoing performance of contractors. Each report consists of a narrative evaluation by the AO, the contractor’s comments, if any, relative to the assessment and the RO’s acknowledged consideration and reconciliation of significant discrepancies between the AO’s evaluation and the contractor’s comments.

5.4 CPARS Format

For information on the CPARS format see Attachments 2, 3, or the [CPARS website](#).

Attachment 1

Evaluation Rating Definitions (Excluding Utilization of Small Business)		
Rating	Definition	Note

Dark Blue/Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there must have been NO significant weaknesses identified.
Purple/Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor was effective.	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There must have been no significant weaknesses identified.
Green/Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor recovered from without impact to the contract. There must have been NO significant weaknesses identified. Contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
Yellow/Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating must be supported by referencing the management

	The contractor's proposed actions appear only marginally effective or were not fully implemented.	tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).
Red/Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the assessment status.

NOTE 2: N/A (not applicable) must be used if the ratings are not going to be applied to a particular area for evaluation.

Evaluation Ratings Definitions (Utilization of Small Business)		
Rating	Definition	Note
Dark Blue/Exceptional	Exceeded all negotiated subcontracting goals or exceeded at least one goal and met all of the other negotiated subcontracting goals for the current period. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Ensure that small businesses are given meaningful, innovative work directly related to the

	<p>(WOSB), veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB) and Historically Underutilized Business Zone (HUBZone) small business. Complied with AMS, 3.6.1-3 Utilization of Small, Small Disadvantaged and Women-Owned, Service-Disabled Veteran Owned , and HUBZone Small Business Concerns. Exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.</p>	<p>project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. Also, there must have been no significant weaknesses identified.</p>
Purple/Very Good	<p>Met all of the negotiated subcontracting goals in the traditional socio- economic categories (SB, SDB and WOSB) and met at least one of the other socio-economic goals (SDVOSB, HUBZone small businesses) for the current period. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, VOSB, SDVOSB, and HUBZone small businesses. Complied with AMS, 3.6.1-3. Met or exceeded any</p>	<p>To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. There must be no significant weaknesses identified.</p>

	<p>other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.</p>	
Green/Satisfactory	<p>Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-economic categories for the current period. Complied with AMS, 3.6.1-3. Met any other small business participation requirements included in the contract. Fulfilled the requirements of the subcontracting plan included in the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.</p>	<p>To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor has addressed or taken corrective action. There must have been no significant weaknesses identified.</p>
Yellow/Marginal	<p>Deficient in meeting key subcontracting plan elements. Deficient in complying with AMS, 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in</p>	<p>To justify a Marginal rating, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating must be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency.</p>

	place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.	
Red/Unsatisfactory	Noncompliant with AMS 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.	To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the Contracting Officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required and any other applicable clauses.

NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change assessment status.

NOTE 2: Zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor will be considered to have met the goal for any socio- economic category where the goal negotiated in the plan was zero.

Attachment 2 Instructions for Completing a Systems CPARS Evaluation

A2.1 The Systems Business Sub-Sectors (not all of which are applicable to FAA procurements) are

Aircraft, Shipbuilding, Space, Ordnance, Ground Vehicles, Training Systems, or Other Systems.

A2.2 Block 1 Name/Address of Contractor. State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, ~~DUNS+4 number~~ UEI, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) Code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

A2.3 Block 2 Type Report. Indicate whether the CPARS is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

A2.4 Block 3 Period of Performance Being Assessed. State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A2.4.1 Period of Performance for Delayed Starts, Protests, or Phase In Periods. In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPARS Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPARS has been processed.

A2.4.2 Period of Performance for Intermediate/Final Reports. CPARS assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPARS Focal Point.

A2.4.3 Period of Performance for Out-of-Cycle Reports. Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report that will be posted to CPARS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of-Cycle report posted in the CPARS AIS, the CPARS will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A2.5 Block 4a Contract Number. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule, and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule, or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order/call number field should be used to reflect the contract/schedule/agreement number for the order/call.

A2.6 Block 4b Business Sector and Sub Sector. Select Services/IT/Operations

A2.7 Block 5 Contracting Office (Organization and Code). Identify the contracting office symbol.

A2.8 Block 6 Location of Contract Performance. Provide a geographical reference (e.g., nearest city and installation name).

A2.9 Block 7a Contracting Officer. Self-explanatory.

A2.9.1 Block 7b Phone Number. Include commercial phone number in the following format:
(XXX) XXX-XXXX

A2.10 Block 8a Contract Award Date. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A2.10.1 Block 8b Contract Effective Date. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar only if that date is later than Block 8a, Contract Award Date.

A2.11 Block 9 Contract Completion Date. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A2.12 Block 10 Contract Percent Complete/Delivery Order Status. State the current percent of the contract that is complete. If Cost Performance Reports (CPR) or Cost/Schedule Status Reports (C/SSR) data is available, calculate percent complete by dividing cumulative Budgeted Cost of Work Performed (BCWP) by Contract Budget Base (CBB) (less management reserve) and multiply by 100. CBB is the sum or negotiated cost plus estimated cost of authorized undefinitized work. If CPR or C/SSR data is not available, estimate the percent complete by dividing the number of months elapsed by the total number of months in contract period of performance and multiplying by 100. In the event an Indefinite Delivery contract is utilized, estimate the percent complete.

A2.13 Block 11 Awarded Value. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order/call.

A2.14 Block 12 Current Contract Dollar Value. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs/BPAs where orders/calls will be assessed individually, state the current obligated amount of the individual order/call, including modifications.

A2.15 Block 13 Basis of Award. Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A2.16 Block 14 Contract Type. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A2.17 Block 15 Key Subcontractors and Description of Effort Performed. Identify subcontractors, including CAGE code and ~~DUNS +4 number~~ UEI, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort.

A2.18 Block 16 (Systems) Program Title and Phase of Acquisition. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify overall program phase and production lot (for example, concept development, engineering and manufacturing development, low-rate initial production, or full-rate production (Lot 1)), and any specific aspects of the phase of the acquisition being evaluated. Identify milestone phases, if applicable. Block 16 (Ship Repair and Overhaul) – Type of Availability. Not applicable to FAA contracts.

A2.19 Block 17 Contract Effort Description. This section is of critical importance to future source selection teams. The description should be detailed enough to assist a future source selection official in determining the relevance of this program to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. For intermediate CPARs, a description of key milestone events that occurred in the review period may be beneficial (e.g., Critical Design Review (CDR), Functional Configuration Audit (FCA)), as well as major contract modifications during the period. Ensure all acronyms are identified.

Provide a complete description of the contract effort that identifies key technologies, components, subsystems, and requirements. For task/delivery/job order contracts, state the number of tasks issued during the period, tasks completed during the period, and tasks that remain active.

For contracts that include multiple functional disciplines or activities, separate them into categories to:

1. Reflect the full scope of the contract, and
2. Allow grouping of similar work efforts within the categories to avoid unnecessary segregation of essentially similar specialties or activities. Each category or area should be separately numbered, titled and described within Block 17 to facilitate cross- referencing with the evaluation of the contractor's performance within each category in Blocks 18 and 19.

A2.20 Small Business Utilization. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?

4. Date of last Individual Subcontracting Report (ISR)/Summary Subcontracting Report (SSR)?

A2.21 Block 18 Evaluation Areas. Evaluate each area based on the following criteria:

A2.21.1 Each area assessment must be based on objective data that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the AOs and other Government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, etc.

A2.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor meets an extremely tight schedule, a dark blue (exceptional) may be appropriate, or meeting a tight schedule with few delinquencies, a green (satisfactory) with a plus sign assessment may be given in recognition of the inherent schedule risk. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A2.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A2.21.4 Many of the evaluation areas in Block 18 represent groupings of diverse elements. The AO should consider each element and use the area rating to highlight significant issues. In addition, the AO should clearly focus on the contractor's "results" as they may be appropriate for the period being assessed in determining the overall area rating.

A2.21.5 Evaluate all areas which pertain to the contract under evaluation unless they are not applicable (N/A).

A2.21.6 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A2.21.7 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A2.21.8 Ratings will be in accordance with the definitions described in Attachment 2, "Evaluation Ratings Definitions."

A2.22 Block 18a Technical (Quality of Product). This element is comprised of an overall rating and six sub-elements. Activity critical to successfully complying with contract requirements must be assessed within one or more of these sub-elements. The overall rating at the element level is the AO's integrated evaluation as to what most accurately depicts the contractor's technical performance or progress toward meeting requirements. This assessment is not a roll-up of the sub-element assessments.

A2.22.1 Block 18a(1) Product Performance. Assess the achieved product performance relative to performance parameters required by the contract.

A2.22.2 Block 18a(2) Systems Engineering. Assess the contractor's effort to transform operational needs and requirements into an integrated system design solution.

A2.22.2.1 Areas of focus should be: the planning and control of technical program tasks, the quality and adequacy of the engineering support provided throughout all phases of contract execution, the integration of the engineering specialties, management of interfaces, interoperability, and the management of a totally integrated effort of all engineering concerns to meet cost, technical performance, and schedule objectives.

A2.22.2.2 System engineering activities ensure that integration of these engineering concerns is addressed up-front and early in the design/development process. The assessment should cover these disciplines: systems architecture, design, manufacturing, integration and support, configuration control, documentation, test and evaluation.

A2.22.2.3 The assessment for test and evaluation should consider success/problems/failure in developing test and evaluation objectives; planning (ground/air/sea) test, simulations and/or demonstrations; in accomplishing those objectives and on the timeliness of coordination and feedback of the test results (simulations/demonstrations) into the design and/or manufacturing process.

A2.22.2.4 Other activities include production engineering, logistics support analysis, supportability considerations (maintenance personnel/skills availability or work hour constraints, operating, and cost constraints, allowable downtime, turnaround time to service/maintain the system, standardization requirements), survivability, human factors, reliability, quality, maintainability, availability, inspection, etc. Although some of these activities will be specifically addressed in other elements/sub-elements (such as product assurance), the focus of the assessment of systems engineering is on the integration of those specific disciplines/activities.

A2.22.2.5 The assessment of systems engineering needs to remain flexible to allow the evaluator to account for program-unique technical concerns and to allow for the changing systems engineering environment as a program moves through the program phases, e.g., Engineering and Manufacturing Development, Production.

A2.22.3 Block 18a(3) Software Engineering. Assess the contractor's success in meeting contract requirements for all applicable software engineering based activities and processes.

A2.22.3.1 Software engineering activities include, as appropriate, software development (design, code, and unit test); application of reuse, COTS, and other non-developmental software components; integration (including software component integration, system integration and test, and acceptance test support); and sustainment. Software processes include, for example: software size, effort, and schedule estimation; requirements analysis, development, and management; software configuration management; software risk identification and management; metrics collection and analysis, technical reviews, decision analysis, and software quality assurance and control, each as they specifically

address software engineering activities.

A2.22.3.2 Consider the contractor's success with respect to:

1. Planning a software development, integration, and testing effort that includes compatible cost, schedule, and performance baselines
2. Delivering expected software driven capabilities on cost and on schedule
3. Effective software metrics collection/analysis and status monitoring/reporting that provide the software visibility necessary to identify timely corrective actions and appropriately execute them
4. Staffing with the software knowledge, skills, and abilities needed to execute the contract across the lifecycle; timely assignment of the appropriate numbers of software staff
5. Awareness and control of software size and stability to enable tracking and allowing growth according to vetted enhancements vice scope creep
6. Effective testing and integration of developed software within the larger system test and evaluation effort
7. Effective processes to acquire, integrate, and test commercial off-the-shelf software and to achieve planned software reuse
8. Achieving software assurance
9. Consistent application of documented software engineering and management processes, including technical reviews, in alignment with contract requirements

A2.22.4 Block 18a(4) Logistic Support/Sustainment. Assess the success, as appropriate, of the contractor's performance in accomplishing logistics planning. For example, maintenance planning; manpower and personnel; supply support; support equipment; technical provisioning data; training and support; computer resources support; facilities; packaging, handling, storage and transportation; design interface; the contractor's performance of logistics support analysis activities and the contractor's ability to successfully support fielded equipment. When the contract requires technical and/or engineering data deliverables, the cognizant cataloging and/or standardization activity comments should be solicited.

A2.22.5 Block 18a(5) Product Assurance. Assess how successfully the contractor meets program quality objectives; e.g., production, reliability, maintainability, inspection, testability, and system safety, and controls the overall manufacturing process. The PM must be flexible in how contractor success is measured, e.g., data from design test/operational testing successes, field reliability and maintainability and failure reports, user comments and acceptance rates, improved subcontractor and vendor quality, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall manufacturing process to include material control, shop floor planning and control, status and control, factory floor optimization, factory design, and factory performance.

A2.22.6 Block 18a(6) - Other Technical Performance. Assess all the other technical activity critical to successful contract performance. Identify any additional assessment aspects that are unique to the contract or that cannot be captured in another sub-element.

A2.23 Block 18b Schedule. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, administrative requirements, etc. Assess the contractor's adherence to the required delivery schedule by assessing the contractor's efforts during the assessment period that contribute to or affect the schedule variance. Also, address significance of scheduled events (e.g., design reviews), discuss causes, and assess the effectiveness of contractor corrective actions.

A2.24 Block 18c Cost Control. (Not Applicable for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Is the contractor experiencing cost growth or underrun, discuss the causes and contractor-proposed solutions for the cost overruns. For contracts where task or contract sizing is based upon contractor-provided person hour estimates, the relationship of these estimates to ultimate task cost should be assessed. In addition, the extent to which the contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in each work effort should be assessed.

A2.24.1 Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the Cost element. The contractor's performance under the UCA must be separately identified but considered in the overall annual ratings.

A2.25 Block 18d Management. This element is comprised of an overall rating and three sub-elements. Activity critical to successfully executing the contract must be assessed within one or more of the sub-elements. This overall rating at the element level is the AO's integrated assessment as to what most accurately depicts the contractor's performance in managing the contracted effort. It is not a roll-up of the sub-element assessments.

A2.25.1 Block 18d(1) Management Responsiveness. Assess the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals (especially responses to change orders, Engineering Change Proposals (ECPs), or Letter or Ceiling Priced Contracts), the contractor's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction. Consider the contractor's responsiveness to the program as it relates to meeting contract requirements during the period covered by the report.

A2.25.2 Block 18d(2) Subcontract Management. Assess the contractor's success with timely award and management of subcontracts. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.

A2.25.3 Block 18d(3) Program Management and Other Management. Assess the extent to which the contractor discharges its responsibility for integration and coordination of all activity needed to execute the contract; identifies and applies resources required to meet schedule requirements; assigns responsibility for tasks/actions required by contract; communicates appropriate information to affected program elements in a timely manner. Assess the contractor's risk management practices, especially the ability to identify risks and formulate and implement risk mitigation plans. If applicable, identify

any other areas that are unique to the contract, or that cannot be captured elsewhere under the Management element.

A2.25.3.1 Integration and coordination of activities should reflect those required by the Integrated Master Plan/Schedule. Also consider the adequacy of the contractor's mechanisms for tracking contract compliance, recording changes to planning documentation and management of cost and schedule control system, and internal controls, as well as the contractor's performance relative to management of data collection, recording, and distribution as required by the contract.

A2.26 Block 18e Utilization of Small Business. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Veteran Owned Small Businesses, Service Disabled Veteran Owned Small Businesses, Historically Black Colleges and Minority Institutions, Historically Underutilized Business Zone (HUBZone) Small Businesses and ANCs and Indian Tribes that are not any of these categories) to participate in contract performance consistent with efficient performance of the contract.

A2.26.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Where applicable, assess compliance with Small Business Subcontracting Plan (Test Program)) including any program specific data required in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A2.26.2 It may be necessary to seek input from the Small Business specialist, ACO or PCO in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted. In cases where the contractor has a comprehensive subcontracting plan, request the DCMA Comprehensive Subcontracting Plan Manager to provide input including any program specific performance information.

A2.26.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "green" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan (see AMS 3.6.1-6). In such case, the Utilization of Small Business area must be rated "red".

A2.26.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A2.26.5 Ratings will be in accordance with definitions described in Attachment 1, "Evaluation Rating Definitions (Utilization of Small Business)."

A2.26.6 A contract may have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required

and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A2.27 Block 18f Other Areas. Specify additional evaluation areas that are unique to the contract or that cannot be captured elsewhere on the form. More than one type of entry may be included but should be separately labeled. If extra space is needed, use Block 20.

A2.27.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18f). The AO should translate the award fee earned to color ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A2.27.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type incentive contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18f).

A2.27.3 Use Block 18f in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form. As an example, this block may be used to address security issues, provide an assessment of provisioning line items or other areas as appropriate.

A2.28 Block 19 Variance (Contract-to-Date). If Cost Performance Report (CPR) or Cost/Schedule Status Review (C/SSR) data are available, identify the current percent cost variance to date, the Government's estimated completion cost variance (percent), and the cumulative schedule variance (percent). Indicate the cutoff date for the CPR or C/SSR used.

A2.28.1 Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, column 6 of the C/SSR) by the Budgeted Cost of Work Performed (BCWP) and multiply by 100.

A2.28.2 Compute completion cost variance percentage by dividing the Contract Budget Baseline (CBB) less the Government's Estimate At Completion (EAC) by CBB and multiplying by 100. The calculation is $[(CBB - EAC)/CBB] \times 100$. The CBB must be the current budget base against which the contractor is performing (including formally established Over Target Baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in Block 20 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR that described the baseline adjustment. For example, "The contract baseline was formally adjusted on (date); see CPAR for (period covered by report) for an explanation."

A2.28.3 Compute cumulative schedule variance percentage by dividing the Budgeted Cost of Work Performed (BCWP) less budgeted cost of work scheduled (BCWS) by BCWS and multiply by 100. The calculation is $[(BCWP - BCWS)/BCWS] \times 100$. If the schedule variance exceeds 15 percent (positive or negative), briefly discuss in Block 20 the significance of this variance for the contract

effort.

A2.29 Block 20 AO Narrative (see Paragraph 1.4). A factual narrative is required for all assessments regardless of color rating (e.g., even "green" or "satisfactory" ratings require narrative support). Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18 or 19. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations. The AO's comments in Block 20 may be up to 16,000 characters (approximately three pages) in CPARS.

A2.29.1 The AO must choose the applicable choice to the following statement after block 20: "Given what I know today about the contractor's ability to execute what they promised in their proposal, I (would , would not) award to them today given that I had a choice."

A2.30 Block 21 AO Signature. The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A2.31 Block 22 Contractor Comments. Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A2.32 Block 23 Contractor Representative Signature. The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A2.33 Block 24 RO Comments. The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A2.34 Block 25 - RO Signature. The RO will enter his or her name, title, organization (AF users do not include a code), phone number in the following format: (XXX) XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 3 Instructions for Completing a Services, Information Technology, or Operations Support CPAR

A3.1 All business sectors, except Systems, and construction and architect-engineer, will be completed on this form.

A3.2 Block 1 Name/Address of Contractor. State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required).

Identify the CAGE code, ~~DUNS+4-number~~UEI, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

A3.3 Block 2 Type Report. Indicate whether the CPAR is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

A3.4 Block 3 Period of Performance Being Assessed. State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A3.4.1 Period of Performance for Delayed Starts, Protests or Phase-In Periods. In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPAR Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPAR has been processed.

A3.4.2 Period of Performance for Intermediate/Final Reports. CPAR assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPAR Focal Point.

A3.4.3 Period of Performance for Out-of-Cycle Reports. Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to the CPARS AIS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of- Cycle report posted in the CPARS AIS, the CPAR will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A3.5 Block 4a Contract Number. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order number field should be used to reflect the contract/schedule/agreement number for the order/call.

A3.6 Block 4b Business Sector and Sub-Sector. Service/IT/Operations

A3.7 Block 5 Contracting Office (Organization and Code). Identify the contracting office symbol.

A3.8 Block 6 - Location of Contract Performance. Provide a geographical reference (e.g., nearest city and installation name) if performance is on a military installation.

A3.9 Block 7a Contracting Officer. Self-explanatory.

A3.9.1 Block 7b Phone Number. Include the commercial phone number in the following format:
(XXX) XXX-XXXX

A3.10 Block 8a Contract Award Date. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A3.10.1 Block 8b Contract Effective Date. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar date only if that date is later than Block 8a, Contract Award Date.

A3.11 Block 9 Contract Completion Date. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A3.12 Block 10 N/A. Not applicable.

A3.13 Block 11 Awarded Value. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order.

A3.14 Block 12 Current Contract Dollar Value. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task/job order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs where orders will be assessed individually, state the current obligated amount of the individual order, including modifications.

A3.15 Block 13 Basis of Award. Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A3.16 Block 14 Contract Type. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A3.17 Block 15 Key Subcontractors and Description of Effort Performed. Identify subcontractors, including CAGE code and ~~DUNS +4 number~~UEI, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort. If possible, include the amount of subcontract costs of the total contract effort. Discussion of the prime contractor's management of the subcontractor should be included in Block 18d-Business Relations.

A3.18 Block 16 Program Title and Phase of Acquisition. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify the type of services (for example, professional services, maintenance, installation or information technology services).

A3.19 Block 17 Contract Effort Description. Provide a description of the contract effort that identifies the key requirements and/or type of effort. This section is of critical importance to future source selection officials. The description should be detailed enough so that it can be used in determining the relevance of this program to future source selections. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. Ensure acronyms are identified. For task/delivery order contracts, state the number of orders issued during the period.

A3.20 Small Business Utilization. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR) /Summary Subcontracting Report (SSR)

A3.21 Block 18 Evaluation Areas. Evaluate each area based on the following criteria:

A3.21.1 Each area assessment must be supported by objective data (or subjective observations) that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the PM, Contracting Officer and other specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example include the Contracting Officer's Representative (COR) for the program and may also be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, data, etc.

A3.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A3.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A3.21.4 Evaluate all areas which pertain to the contract under evaluation, unless they are not applicable ("N/A").

A3.21.5 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A3.21.6 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A3.21.7 Ratings will be in accordance with the definitions in Attachment 2.

A3.21.8. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than satisfactory solely for not performing beyond the requirements of the contract.

A3.22 Block 18a Quality of Product or Service. Assess the contractor's conformance to contract requirements, specifications and standards of good workmanship (e.g., commonly accepted technical, professional, environmental, or safety and health standards). List and assess any sub-elements to indicate different efforts where appropriate. Include, as applicable, information on the following:

1. Are the reports data accurate?
2. Does the product or service provided meet the specifications of the contract?
3. Does the contractor's work measure up to commonly accepted technical or professional standards?
4. What degree of FAA technical direction was required to solve problems that arise during performance?

For Operations Support: Assess how successfully the contractor meets program quality objectives such as production, reliability, maintainability and inspection. The AO must be flexible in how contractor success is measured; e.g., using data from field reliability and maintainability and failure reports, user comments and acceptance rates, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall production process to include material control, shop planning and control, and providing status updates.

A3.23 Block 18b Schedule. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or affect the schedule variance).

This assessment of the contractor's adherence to the required delivery schedule should include the contractor's efforts during the assessment period that contributes to or affect the schedule variance. This element applies to contract closeout activities as well as contract performance. Instances of adverse actions such as the assessment of liquidated damages or issuance of Cure Notices, Show Cause Notices, and any other notifications to the contractor of serious contract performance issues are indicators of problems which may have resulted in variance to the contract schedule and should, therefore, be noted in the evaluation.

A3.24 Block 18c Cost Control. (Not required for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Include, as applicable, the following information:

1. Does the contractor keep within the total estimated cost (what is the relationship of the

- negotiated costs and budgeted costs to actuals)?
2. Did the contractor do anything innovative that resulted in cost savings?
3. Were billings current, accurate and complete?
4. Are the contractor's budgetary internal controls adequate?

Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the cost element. The contractor's performance under the UCA will be separately identified but considered in the overall annual ratings.

A3.25 Block 18d Business Relations. Assess the integration and coordination of all activity needed to execute the contract, specifically the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals, the contractor's history of reasonable and cooperative behavior (to include timely identification of issues in controversy), customer satisfaction, timely award and management of subcontracts. Include, as applicable, information on the following:

1. Is the contractor oriented toward the customer?
2. Is interaction between the contractor and the government satisfactory or does it need improvement?
3. Include the adequacy of the contractor's accounting, billing, and estimating systems and the contractor's management of Government Property (GFP) if a substantial amount of GFP has been provided to the contractor under the contract.
4. Address the timeliness of awards to subcontractors and management of subcontractors, including subcontract costs. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.
5. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team.

A3.26 Block 18e Management of Key Personnel (For Services and Information Technology Business Sectors only - Not Applicable to Operations Support). Assess the contractor's performance in selecting, retaining, supporting, and replacing, when necessary, key personnel. For example:

1. How well did the contractor match the qualifications of the key position, as described in the contract, with the person who filled the key position?
2. Did the contractor support key personnel so they were able to work effectively?
3. If a key person did not perform well, what action was taken by the contractor to correct this?
4. If a replacement of a key person was necessary, did the replacement meet or exceed the qualifications of the position as described in the contract schedule?

A3.27 Block 18f Utilization of Small Business. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Service Disabled Veteran

Owned Small Business, Historically Black Colleges and Universities and Minority Educational Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A3.27.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Assess any small business participation goals which are stated separately in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.27.2 It may be necessary to seek input from the Small Business Office or Contracting Officer in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted.

A3.27.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "satisfactory" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan. In such case, the Utilization of Small Business area must be rated "unsatisfactory".

A3.27.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A3.27.5 Ratings will be in accordance with definitions described in Attachment 2, "Evaluation Ratings Definitions (Utilization of Small Business)."

A3.27.6 A contract must have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A3.28 Block 18g Other Areas. Specify additional evaluation areas that are unique to the contract, or that cannot be captured elsewhere on the form. More than one type of entry may be included, but should be separately labeled. If extra space is needed, use Block 20.

A3.28.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18g). The AO should translate the award fee earned to adjectival ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A3.28.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type contracts), it should be reported in a manner similar to the

procedures described above for award fee (by entering "Incentive" in Block 18g).

A3.28.3 Use Block 18g in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form.

A3.29 **Block 19 N/A.** Not applicable.

A3.30 **Block 20 Assessing Official Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of rating. Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal assessment could, for example, be supported by information concerning personnel changes or schedule delinquency rate. Key personnel familiar with the effort may have been replaced by less experienced personnel. Sources of the data used by the AO for the assessment may include customer/field surveys or evaluation of contractor reports. The Contracting Officer should be contacted to ensure that all applicable data has been incorporated. Block 20 comments may be up to 16,000 characters (approximately three pages) in CPARS.

A3.30.1 The AO must choose the applicable choice to the following statement after Block 20: "Given what I know today about the contractor's ability to execute what they promised in their proposal, I (would, would not) award to them today given that I had a choice."

A3.31 **Block 21 AO Signature.** The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A3.32 **Block 22 Contractor Comments.** Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A3.33 **Block 23 Contractor Representative Signature.** The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A3.34 **Block 24 RO Comments.** The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A3.35 **Block 25 - RO Signature.** The RO will enter his or her name, title, organization, phone number in the following format: (XXX)XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 4 CPARS Website Features

Features of the CPARS website include:

1. The “production” CPAR system for actual entry of the performance evaluation data;
2. The “practice” CPAR system. The practice system is a mirror image of the functionality of the CPAR system using a separate database of simulated CPAR records. The practice system allows users to gain familiarity with the system without actually entering live performance evaluation data;
3. A “requirements” page that describes hardware and software required, security access levels, security features, how to obtain a user account and technical service support, and answers to frequently asked questions.
4. Instructions on Internet Explorer (IE) fixes that may be necessary for FAA access to CPARS;
5. A Quality Checklist that tutors users on completing a quality evaluation;
6. Link to reference material;
7. Link to CPARS Training;
8. Access Request forms;
9. Software Release history; and
10. Metrics (updated quarterly).